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THE JOURNAL OF

LIBERTARIAN STUDIES

AN INTERDISCIPLINARY REVIEW

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Volume 14, Number 1, Winter 1998–99

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MAATSKAPPY, STATE, AND EMPIRE: A PRO-BOER REVISION

Joseph R. Stromberg*

As we approach the centennial of the Second Anglo–Boer War (*Tweede Vryheidsoorlog*, or "Second War for Freedom"), reassessment of the South African experience seems in order. Whether the recent surrender by Afrikaner political leaders of their "central theme" and the dismantling of their grandiose *Apartheid* state will lead to heaven on earth (as some of the Soweto "comrades" expected), or even to a merely tolerable multiracial polity, remains in doubt. Historians have tended to look for the origins of South Africa's "very strange society" in the interaction of various peoples and political forces on a rapidly changing frontier, especially in the 19th century.

APPROACHES TO SOUTH AFRICAN FRONTIER HISTORY

At least two major schools of interpretation developed around these issues. The first, Cape Liberals, viewed the frontier Boers largely as rustic ruffians who abused the natives and disrupted orderly economic progress only to be restrained, at last, by humanitarian and legalistic British paternalists. Afrikaner excesses, therefore, were the proximate cause and justification of the Boer War and the consolidation of British power over a united South Africa. The "imperial factor" on this view was liberal and progressive in intent if not in outcome.

The opposing school were essentially Afrikaner nationalists who viewed the Boers as a uniquely religious people thrust into a dangerous environment where they necessarily resorted to force to overcome hostile African tribes and periodic British harassment. The two traditions largely agreed on the centrality of the frontier, but differed radically on the villains and heroes.[1]

Beginning in the 1960s and '70s, a third position was heard, that of younger "South Africanists" driven to distraction (and some

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[1]*The Oxford History of South Africa*, Monica Wilson and Leonard Thompson, eds. (Oxford: Oxford University Press, 1969 and 1971), 2 vols., is probably the most important summary of the Cape Liberal tradition. Thompson gives an unfriendly account of Afrikaner nationalist historiography in *The Political Mythology of Apartheid* (New Haven, Conn.: Yale University Press, 1985). Very little seems available in English from the nationalist side.

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degree of Marxism) by the ongoing South African crisis. By some Hegelian "cunning of Reason," these writers improved our understanding of the complexities of the South African frontier while—intentionally or not—building the foundations of a modestly pro-Boer revisionism.[2] (The parallel trajectory of Eugene D. Genovese, the stalwart of Marxist writing on the American South, is worth remarking.) In addition, a few *verligte* ("enlightened") Afrikaner authors (Marq de Villiers, Rian Malan, and even André Brink) suggest, here and there, the need for a second look at the imperial factor.

South African history down to the Boer War constitutes a particular instance of what Walter Prescott Webb called *The Great Frontier*.[3] The Great Frontier was European expansion realized as parallel processes in the Americas, Southern Africa, and the Antipodes. Like Australian Westerns, the early 1960s film, *The Hellions*, set in South Africa, nicely illustrates common frontier themes.

Debate over the Turner Thesis deeply influenced South African historiography, with Cape Liberals and Afrikaner nationalists taking opposite evaluative positions on the frontier's impact on the Boers. More recently, some writers have taken to presenting frontiers as the frontline on which the capitalist mode of production was busily incorporating the nonwestern world into its fold. (See Immanuel Wallerstein and a cast of thousands.) At the same time, others, beginning perhaps with William Christie MacLeod, have sought to look seriously at the role of the peoples on the other side of the frontier.[4] One result of this work is the distinction between "frontiers of exclusion" and "frontiers of inclusion." Frontiers of exclusion were the work of northwestern European Protestants who intended to settle new lands, driving out aboriginal inhabitants. Frontiers of inclusion were established by Iberian Catholics who, perhaps lacking manpower and actuated by a different ideology, were prepared to subordinate, Christianize, and incorporate native peoples into their system.

Perhaps by default, South Africa became a Protestant frontier of inclusion where natives, once they saw who was *baas*, were put

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[2]E.g., Martin Leggasick, Timothy Keegan, Stanley Trapido, Shula Marks, and others who will be cited *eundo*. (Not all these writers are necessarily South Africans by birth.)

[3]Walter Prescott Webb, *The Great Frontier* (Austin: University of Texas, 1951).

[4]See Christopher Saunders, "Political Processes in the Southern African Frontier Zone," in Howard Lamar and Leonard Thompson, eds., *The Frontier in History: North America and Southern Africa Compared* (New Haven, Conn.: Yale University Press, 1981), pp. 149–50; and William Christie MacLeod, *The American Indian Frontier* (New York: K. Hall, Trench, Trubner, 1928).

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to work under various forms of unfree labor. It is perhaps best to put aside the question of whether or not Boer benevolence or unfavorable numerical ratios led to this particular result, but mid-20th-century Afrikaner apologists had a point when they complained about anti-*Apartheid* critics from settler-colonies whose natives had mysteriously "disappeared" during the frontier period. This reproduced nicely the American debates of the 1880s between Indianless Eastern philanthropists and Western settlers. (This does not mean the philanthropists were wrong, but it does make their objections to what Westerners were doing seem a bit *strategic*, ancillary to other goals.) How the South African way station grew from a mercantilist outpost to a new nation and people is the subject of what follows.

DUTCH CAPE COLONY TO 1815

In the mid-17th century, the Dutch East India Company (*Verenigde Oost-Indische Compagnie)* established a way station on the South African coast to provision company ships on the long voyage between the Netherlands and the East Indies. Two hundred V.O.C. functionaries and indentured servants came ashore in 1652 at what became Cape Town. The Cape Colony was a thoroughly mercantilist enterprise. Its purpose was to make money for a chartered monopolistic company and for the Dutch government that created it. Any development of local enterprise, beyond what the company wanted, took place over its opposition.

In 1657, the Governor freed some 40 company "servants." These burghers, or freemen, went into farming and stock raising. They expanded their operations by trading for cattle with the Khoikhoi (or Khoi), the first natives encountered at the Cape, some of this trade being "illicit" and unauthorized. Contact with Europeans and their diseases soon demoralized the Khoi (as with Amerindians). Expansion of Dutch farming encroached on Khoi land. Two Dutch–Khoikhoi wars resulted (1659–60 and 1673–77). Thousands of cows and sheep seized by the whites in these wars helped expand their economy. A 1713 epidemic of smallpox further weakened the natives. (One is reminded, somehow, of Pequots and Puritans.) The Khoi disappeared as a distinct culture, contributing their genes to the Cape Coloured population.

As their societies disintegrated, many Khoi entered into client relationships with white farmers, or "Boers," becoming their ox-wagon drivers, herdsmen, and so forth. Native dependents helped make Boer economic and geographic expansion possible. By the 1780s, when Boers ran up against the more numerous and organized

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Xhosa tribes, armed Khoi servants were serving as members of Boer "commandos" (militias, or frontier patrols). Further complicating matters, the V.O.C. chose to import chattel slaves from East Africa and the East Indies (Malays) rather than bring in white labor from the Netherlands. Roman–Dutch law provided legal categories for slaves (derived from classical precedent), which had needed to be reinvented in the English overseas empire.

Their life-style led the Boers increasingly to disdain manual labor. At the same time, the Dutch-descended colonists (complemented by French Huguenots and Germans) thought of Africa, not the distant Netherlands, as their home. Their form of Dutch, with its borrowings from Portuguese, Malay, African, and other languages, and its simplified grammar, emerged as the newest Germanic language: Afrikaans. The people began calling themselves Afrikaners. The Huguenots reinforced the severe Calvinism of the settlers.

The Boers, or Afrikaners, chafed under V.O.C. mercantilism. Coming into Cape Town, a Boer often found that the fixed prices paid for goods did not cover the costs of transporting them. As a result, frustrated farmers "trekked" east and inland to escape the V.O.C.'s regulations. The company forebade them to barter with natives or trek into the frontier in 1677, 1727, 1739, 1770, 1774, and 1786. (Obviously, an effective piece of legislation!) "Trekboers" simply packed up and moved into the frontier when so inclined.

As Boers moved east toward the Fish River, they came into hostile contact with the Xhosa. Wars involving the Colony were fought in 1779–81, 1789, and 1799. Here, by contrast with raids against the San (cousins of the Khoi), *some* rules came into play. Both sides looted and destroyed property, but neither intentionally killed women and children. Prisoners *might* be taken. As in Britain's North American colonies, the activities of frontiersmen caused friction with natives which the V.O.C. wished to avoid. Afrikaner grievances against company rule grew correspondingly. In the 1780s and '90s, the V.O.C. ran deeply into debt and, naturally enough, issued its own paper money to "solve" the problem. Courts ruthlessly foreclosed on those unable to keep up with the inflationary spiral and specie vanished from the Colony. Lack of regular judicial services for the outlying Boers created a situation which in the colonial Carolinas had led to Regulator movements. J.A. de Mist, Batavian (Netherlands) Commissioner General, wrote of "murmurings and revolt against such a stepmotherly government." One result was the creation, in a frontier district, of the Republic of Graaf-Reinet (1795–96), inspired by the French Revolution. This was poorly timed, and ran up against British occupiers

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who arrived to secure the sea-route to India as part of the larger world struggle set off by the French Revolution. The British authorities added to the colonists' economic woes by issuing a million paper rix-dollars in 1795, and another million between 1810 and 1815, after their return.[5]

Another Boer grievance concerned Dutch, and later British, attempts to protect natives. In this, the Boers resembled American pioneers. When, in 1806, the British returned to stay, the stage was set for confrontation with the Boers, who had grown into a tough, independent frontier *volk* that resented even *Dutch* government. Rule by foreigners armed with what seemed to be Liberal and Evangelical cant was intolerable. Even the first mild British legislation filled the Boers with horror, leading to small revolt at Slagters Nek in 1815, when Boers resisted service of legal papers on a farmer. One defendant said: "I am a young man who does not yet know what a Government is, as I was never near one."[6] (He was not among the five Boers hanged for rebellion.)

STATELESS PATRIARCHY

That comment reflects the practical anarchism of Boer life on the edges of the Colony. The Boer ideal was *maatskappy*, "a society of free and independent men."[7] Coming from the most commercialized, bourgeois, and individualistic society in Europe (with the possible exception of the British Isles), Afrikaners turned away from the patrician bourgeois high culture of the Netherlands and toward extensive farming and pastoralism. In the ecology in which they now lived, this was economically rational, especially given the absence of capital with which to undertake intensive farming. As they raised cattle and sheep, however, they did not give up their Dutch individualism; indeed, their frontier life may have intensified it. DeKiewiet writes,

> On the great farms each man fled the tyranny of his neighbor's smoke. It followed that their communal life was loosely organized. They came together when compelled by danger or crisis. . . . The habits of their social life were like the discipline of their commandos. It was the sum of individual willingness.[8]

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[5]Quoted in Alexander W. Flynt, "South Africa; Apartheid in Historical Perspective" (M.A. Thesis, University of Washington, 1968), p. 70. On the British monetary inflation, see T.R.H. Davenport, "The Consolidation of a New Society: The Cape Colony," in Wilson and Thompson, eds., *Oxford History*, vol. 1, p. 295.

[6]Quoted in Thompson, *Political Mythology of Apartheid*, p. 111.

[7]Marq de Villiers, *White Tribe Dreaming* (New York: Viking Penguin, 1988), p. 129.

[8]De Kiewiet, *A History of South Africa: Social and Economic* (Oxford: Oxford University Press, 1957), pp. 13, 19.

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A higher (than Dutch) birthrate combined with partible inheritance meant that each young man had to move outward to enjoy the Boer way of life. Boers had come to expect large "farms" as their birthright. This meant increasing collision with African land-users, but the incremental character of Boer expansion kept their "wars" at the level of skirmishes and cattle-raids out of the Old Irish epics. Boers would move every generation to get land, and would trek large distances to get away from unwanted governmental supervision.[9] (*Táin Bo Vaailnge*?)

The realities of frontier life—pastoralism, migration, mobility, patriarchy—corresponded to and directly reinforced a religious outlook based on the pastoral–nomadic parts of the Old Testament involving conquest of promised land. Boer theory and practice went hand in hand. Their theory was Dutch Reformed Calvinism dating from the Synod of Dort (1618) which rejected Arminianism. Rejecting the latter, they certainly could not go in for Enlightenment ideas which had flowered since their ancestors left Europe. Their Protestantism was another source of individualism.[10]

The Boers were united as *maatskappy*, a loose community of individual proprietors, the commando, a volunteer military arm of their society, and as co-religionists. More supervision than this they did not want. A Boer patriarch, sovereign on his own *plek* (place) with his wife, children, and retainers, and armed for defence of his family and property, corresponded quite well—like the Anglo–Celtic Southerner—to the ideal citizen of classical republican theory. Unlike the Southerner, who had some classical liberalism in his republicanism, the Boers were of a simpler school. Their nearest approach to liberalism was the notion of covenant. Thus it makes sense to think of the Boers as patriarchal, pastoral Calvinists living out a practical frontier anarchism.

COERCIVE LABOR PRACTICES

Just as they expected land, Boers had come to expect native labor. On this, they differed less from the British than is commonly supposed, and it is the matter of *scale* which is significant.

Boer "feudalism" was part of a household economy on large farms. Even without the outright chattels brought in by the V.O.C.,

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[9]See John Solomon Otto, "The Migration of the Southern Plain Folk: An Interdisciplinary Synthesis," *Journal of Southern History* 51, no. 2 (May 1985): 183–200, for Southern extensive farming. A Boer needed 6,000 acres to feel independent.

[10]Donald Harman Akenson, *God's Peoples: Covenant and Land in South Africa, Israel, and Ulster* (Ithaca, N.Y.: Cornell University Press, 1992), pp. 45–96.

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farmers and stockraisers had acquired dependent laborers as a result of small-scale conflict with Khoi and, later, Xhosa tribes. A whole literature exists which discusses just how to categorize the Boers' labor practices. Boers were stung by British slave emancipation in 1834, but continued to employ native workers termed "apprentices," "servants," *Woonkaffers* (Africans living on a Boer's "place"), and so on, who worked as stockmen and farm hands in exchange for wages, land for their own animals and crops, or protection from raiders. The Boer received rent in kind, labor rent, and, one way or another, cheap labor, which was the whole point.

Marxists wonder what mode of production this is, but most of them have decided to call these customs "semifeudal relations of production" compatible with an overarching capitalist mode and a prelude to proletarianization of African labor. However characterized, the practices were personal, patriarchal, and coercive, and rested somewhere on a spectrum of slavery, serfdom, sharecropping, and debt peonage. A British colonel noted in 1809 that due to debt, "A Hottentot can now seldom get away at the expiration of his term."[11]

It bears remarking that when the Boers were first in school, so to speak, all the civilized powers with overseas possessions tolerated slavery in the unnuanced form. Slavery, sad to say, has been a trait of most societies with any level of organization at all. Thus, the Khoi and Xhosa were not entirely surprised at being put to work by the Afrikaners, as similar practices existed in their societies. Toward the middle of the 19th century, the Swazi chiefdom (or incipient state) regularly captured neighboring people to sell to Maputo or to the Transvaal Boers. As Ludwig von Mises pointed out, it was only with the rise of classical liberalism and capitalism that anyone bothered to condemn slavery in a principled fashion.[12]

Boers were not running large-scale plantations or factories, and had had little need to participate in the global slave trade. They

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[11]Quoted in Flynt, "South Africa," p. 79.

[12]Large-scale slave systems, logically enough, seem to coincide with the formation of states. See Robert L. Carneiro, "The Chiefdom: Precursor of the State," in Grant B. Jones and Robert R. Kautz, eds., *The Transition to Statehood in the New World* (Cambridge: Cambridge University Press, 1981), pp. 37–79 (esp. 65). On Swazi, see Philip Bonner, "Classes, the Mode of Production and the State in Pre-colonial Swaziland," in Shula Marks and Anthony Atmore, eds., *Economy and Society in Pre-Industrial South Africa* (London: Longman Group, 1980), pp. 95–97; and Robert Ross, "Capitalism, Expansion, and Incorporation on the Southern African Frontier," in Howard Lamar and Leonard Thompson, eds., *The Frontier in History: North America and Southern Africa Compared* (New Haven, Conn.: Yale University Press, 1981), p. 224. On the role of *laissez faire* ideas in relation to slavery, see Ludwig von Mises, *Human Action* (Chicago: Henry Regnery. 1963), p. 632.

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could acquire their "apprentices" by taking captives when on commando raids against local enemies. This brings us to the Boers' subjective attitude toward their servants (which for some seems to be the only significant question): "racism," the only sin believed in by modern Man. Hannah Arendt suggested that the Boers were so "frightened" when they first ran up against the dense Xhosa populations that they took on a permanently irrational need to dominate them ever after. I think it might be simpler to view the matter in terms of Harmanus Hoetink's notion of "somatic norm": that people naturally dislike, or at least are not terribly fond of, people whose appearance is radically different from their own. Add to this the massive differences in culture, language, and level of technology, and you are well on your way to grasping the Boers' reaction to native peoples. Over time, the Boers' easy assumption of superiority hardened into a system of thought so that, in *defending* the Boer cause in 1898, J.F. van Oordt admitted that "the Boers as a whole doubt the existence of a Kaffer- or a Hottentot-soul."[13]

BRITISH RULE, BOER DISCONTENT, GREAT TREK

British policy in the Cape reflected an ever changing mixture of economic interest, global strategy, missionary influence, and liberal and humanitarian ideas. The year 1807 saw the abolition of the slave trade within the Empire. By 1809 the administration was trying to regulate treatment of "apprentices" and "servants." Legal equality, which Boers found quite distasteful, was introduced. Characteristically, the British introduced a "pass" system (a central feature of this century's Grand Apartheid) while reforming native status. The 1820s saw drought, economic depression, and renewed friction with "Bantu" peoples (leading to another Cape–Xhosa war in 1834–35), which added to settler unhappiness.

The last straw was emancipation in all British possessions in 1834. Compensation was to be paid in London (easy for Jamaican planters, not so easy for Boers). Agents offered to collect the Boers' money, but at a high commissions. Angered at the compensation "swindle" and the whole tenor of British policy, Boers quietly prepared to leave the Cape and press on into unknown land to escape

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[13]Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian Books, 1958), p. 192. On somatic norm image, see Harmanus Hoetink, *Slavery and Race Relations in the Americas* (New York: Harper and Row, 1973), pp. 192–210. Van Oordt quoted in Thompson, *Political Mythology of Apartheid*, p 85. A.J. Boëseken states that the earliest documents reveal that in the first several decades of the Cape Colony's existence, distinctions of status were more important than those of race. See "Die Verhouding tussen Blank en Nie-Blank in Suid-Afrika aan die hand van die Vroegste Dokument," *Suid-Afrikaanse Historiese Joernaal* 2 (1970): 3–18.

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British rule. Some 10,000 Boers, led by Pief Retief and Andries Pretorius, among others, set off in 1836, leaving their freed slaves but taking other dependents with them. Pief Retief's "Manifesto" expressed the *Voortrekkers'* grievances:

> We are resolved that wherever we go we shall uphold the just principles of liberty; but whilst we shall take care that no one remains in a state of slavery, we are determined to maintain regulations to suppress crime and to preserve proper relations between master and servant.[14]

British authorities initially laughed off the Great Trek. Lord Glenelg, Colonial Secretary, wrote:

> I can hardly suppose it serious; they are subjects of the Queen, who put themselves beyond her protection, and if reports be true, they are no longer useful citizens but freebooters.[15]

Just in case the Voortrekkers could become a threat, Glenelg persuaded Parliament to pass legislation extending the theoretical reach of Cape laws up to the 20th parallel. Whether the British would actually try to enforce their writs at that distance was unknown. Humanitarians, including the missionary lobby, favored doing so, "treasury-watchers," who wanted to save money, opposed it. As for the Boers, their scouts told them they were marching into empty but devastated land. To see just why it was devastated is our next task.

MFECANE, ZULU STATE FORMATION, AND A FLUID FRONTIER ZONE

The most striking phenomenon of the early-19th century in southern Africa was the *mfecane* or *difaqane* ("forced migration"). Fierce competition for land and water, intensified by drought, led to the rapid, violent expansion of the cattle-herding Nguni people under their paramount chief Shaka, founder of the Zulu state. Organizing his warriors into age-graded regiments, Shaka Zulu instituted a shift from thrown weapons to close-in "shock" weapons and tactics, a strategy typical of state-building rulers. Shaka's

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[14]Full text in W.A. de Klerk, *The Puritans in Africa* (Harmondsworth: Penguin Books, 1975), pp. 22–24. In *Die Oorsprong van die Groot Trek* (Kaapstad[Capetown]: Tafelberg, 1974), Afrikaner historian C.F.J. Muller lays great stress on what one might call the "anarcho-tyrannical" aspects of British rule, i.e., the attempt to enforce humanitarian notions about racial relations while failing to deal with the overriding issue—from the Boer standpoint—of frontier security (esp. at 180–96). And, for this useful concept, see Samuel Francis, "Anarcho-Tyranny, USA," *Chronicles* 18, no. 7 (July 1994): 14–19.

[15]Quoted in Flynt, "South Africa," p. 121.

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wars decimated as many as 100 tribes with as many as a million dead, increasing Zulu territory from 100 square miles to 200,000, and his armies from 500 to 50,000 warriors.[16] Despite his current vogue, he was not exactly a mild ruler. As de Villiers writes, "[t]o increase his insurance, he effectively depopulated the southern part of Natal. . . . Almost a fifth of Africa was affected in some way by the *mfecane*."[17] Shaka's enemies fled east, west, and north, creating an empty desolated zone. This was the land towards which the Boers were trekking.

The Voortrekkers and their immense wagons had to bear northeast to avoid the Griqua states to the north and the main Xhosa centers to the east. The Griqua were "Cape Coloured" frontier folk who had trekked from the Cape in the 1810s and maintained rather minimal states advised by missionaries. Eventually, the Boer parties faced the choice of continuing north into the highveld, a large elevated plain above the Orange River, or of turning east through the Drakensberg Mountains. The main body of Trekkers chose the latter course, which would bring them into Natal, depopulated by the *mfecane*.

In Natal, the Boers would have access to the Indian Ocean and a homeland, but first they had to deal with Dingaan, Shaka's successor. Pief Retief agreed to recapture stolen cattle in exchange for land. This done, Dingaan ordered the killing of the "wizards" when Retief and a party of 70 some Trekkers came to conclude the deal. Initially caught off guard, the remaining Voortrekkers circled their wagons into a laager formation and inflicted a stunning defeat on the Zulu kingdom on 16 December 1938. (3,000 Zulu warriors killed by Afrikaner riflemen; three Boers wounded.) Mpande, half brother to Dingaan, offered the Natal Voortrekkers an alliance against Dingaan, which they immediately accepted. They now dictated terms to Dingaan who ceded a full half of his territory. To the Trekkers, the Battle of Blood River was an Old Testament miracle demonstrating their special covenant with God.

They set up a Republic of Natal to the non-amusement of the British. James Stephen summed up the Colonial Office's goals: "to deny the trekkers independent access to the sea . . . and so to smoth-

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[16]See Jeff Guy, "Ecological factors in the rise of Shaka and the Zulu kingdom" in Marks and Atmore, eds., *Economy and Society*, pp. 102–19. On Shaka, see *Oxford History of South Africa*, vol. 1, pp. 342–51. *Mfecane* literally means "the crushing." Muller notes that estimated deaths from military action, disease, starvation, and the killing of refugees by large animals and cannibals (themselves often near starvation) range from the hundreds of thousands up to George Theal's estimate of nearly two million (*Oorsprong van die Groot Trek*, p. 82).

[17]De Villiers, *White Tribe Dreaming*, pp. 109–10.

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er the potential dangers of Boer independence to imperial security." Britain "annexed" Natal in 1844, backing this up with force. Disgruntled Boers trekked again. De Villers comments that "British colonial realities were different from philanthropic intentions. Boer and Briton proved not so very different after all." The administration restricted native movement and dumped "surplus" laborers into reserves from which the "poll tax" could flush them back out as needed. As in the Cape, these experiments showed how *political* means—as opposed to the direct Boer methods—could provide extra-economic coercion to depress native labor below a free-market price.[18]

MAATSKAPPYE, CHIEFDOMS, MINIMAL STATES AND EMPIRE ON A FLUID FRONTIER

Revisionist writings on 19th-century South Africa make one thing abundantly clear: there was a multiplicity of contending forces not reducible to Britons and Boers. In addition to the missionary-sponsored Griqua states already mentioned, there was an array of chiefdoms, some of them sufficiently consolidated and centralized to be termed native states. These include at least the Zulu kingdom, the Pondo, the Swazi, and Lesotho. These societies existed in a pluralistic environment in which changing combinations of trade, small-scale warfare, and diplomacy were the method of survival. Alliances cut across racial and cultural lines, and it was not unusual to see Boers allied with Griquas or Africans against some current opponent (which could include the Empire). Participants in the 1815 Slagters Nek rebellion had seriously negotiated with a neighboring Xhosa chief for support in driving out the British. Martin Legassick notes that while Boers expected their servants "to be non-white: they did not expect all non-whites to be their servants" (another possible contrast with the Empire). When necessary or expedient, individual Afrikaners or whole communities might live in alliance with, or even under the theoretical jurisdiction of, a native chief. Andries Pretorius and Hendrik Potgieter, Voortrekker leaders, were torn between being leaders in the European sense or transforming themselves into African chiefs who happened to be white.[19]

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[18]Stephen quoted in Flynt, "South Africa," p. 115; de Villiers, *White Tribe Dreaming*, p. 138. On "extra-economic coercion," see David S. Landes, "The Nature of Economic Imperialism" in Kenneth E. Boulding and Tapan Mukerjee, eds., *Economic Imperialism* (Ann Arbor: University of Michigan Press, 1972), pp. 128–29.

[19]Martin Legassick, "The Frontier Tradition in South African Historiography," in Marks and Atmore, *Economy and Society*, pp. 64-67. On the Slagters Nek radicals' proposed alliance with Ngqika, see Thompson, *Political Mythology of Apartheid*, pp. 111–12.

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Perhaps the most interesting figure in relation to all this is Moshweshwe (or Moshesh), paramount chief of the Sotho (Lesotho or Basuto) state. Timothy Keegan characterizes the Sotho kingdom as a "reconstruction state" built up out of the ruins of the *mfecane*. Moshweshwe fought Bergenaars (offshoots of the Griqua) and !Kora, but his strong points were relative benevolence at home and adroit diplomacy to play off potential enemies—Zulus, Boers, and British—against one another. De Villiers says, "[e]ven in his diplomacy he was unusual, resorting to deceit only after many years of being lied to by the British." He thought it politic to Christianize his people but brought in French missionaries to keep his distance from the British. Lesotho became a great source of grain for the Eastern Cape and for Trekboers further out, and so large-scale trade developed.[20]

Market relations ramified through the frontier zone, decentralizing tribal economic life and undermining the traditional power of the chiefs (which rested on redistribution of goods).[21] New trading opportunities encouraged expansion of production and innovation at the same time that culturally based misunderstandings—especially regarding use and ownership of land—made resort to violence reasonably frequent. There was certainly the appearance of irresolvable instability here. The *Oxford History*, which (like Nature) abhors a vacuum, comments: "During the 1840s Britain was progressively sucked into this scene of anarchy."[22]

Following the Misesian path of social rationalism, I think it fair to say that almost all "cooperation" above the level of *maatskappy* or tribe which took place on this complex and fluid frontier followed precisely the form of market exchange.[23] "The market," as one might expect, receives the usual criticisms from many historians of this subject for not immediately catapulting all the participants into the Garden of Eden and for being "unequal." It goes without saying that all benefited from exchange to one degree or another and that alleged "market failure" on the South African fron-

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[20]Timothy Keegan, "Trade, Accumulation and Impoverishment: Mercantile Capital and the Economic Transformation of Lesotho and the Conquered Territory, 1870-1920," *Journal of Southern African Studies* 12, no. 2 (April 1986): 197–98; de Villers, *White Tribe Dreaming*, p. 114. Muller recounts that Moshweshwe "even handled with tact" the cannibals that had eaten his grandfather, Peete. Once he had them in his power, he referred to them as "the tomb of the departed" and worked to convert them into useful adherents of his kingdom. See *Die Oorsprong*, p. 79.

[21]See, for example, William Beinaart, "Production and the Material Basis of Chieftainship: Pondoland c. 1830-80," in Marks and Atmore, *Economy and Society*, pp. 120–47.

[22]*Oxford History of South Africa*, vol. 1, p. 415.

[23]Joseph T. Salerno, "Ludwig von Mises as Social Rationalist," *Review of Austrian Economics* 4 (1990): 26–54.

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tier has entirely to do with the use of force by all parties at different times, and by the persistent tendency of chiefs, local states (where they existed), and the Empire to intervene to alter market outcomes.

From the Cape, the British tried to impos order via state-level violence, as in the 1846 Cape–Xhosa War (there are nine of these in all). The hard-pressed Xhosa turned to magic reminiscent of the Amerindian Ghost Dance movement, and slaughtered all their cattle. Some 70,000 starved and wandering beggars ran through the frontiers. The British made treaties with Adam Kok, the East Griqua chief, and with Moshweshwe, in an attempt to keep control and offset Boer influence. The British gave them arms and put them on salary. In 1848, they proclaimed British "annexation" of everything up to the Vaal River.

In the meantime, Voortrekkers had established themselves above the Orange River, and some had pushed on above the Vaal. The Natal Voortrekkers had joined them. British assertion of authority over "Trans-Orangia" directly challenged the Boers living there. When British forces defeated Boer "rebels" at Boomplaats in August 1848, thousands followed Pretorius into the Transvaal. An attempt to conciliate the Boer with grants of native land led to warfare with the latter. Expenses rose, and the Colonial Office decided that toleration of independent Boer republics might be the best short-run option. By 1854, the British had effectively withdrawn from Trans-Orangia.

Timothy Keegan argues that British involvement in Trans-Orangia set off Boer state formation when some Boer leaders realized the opportunity that a real state could provide for capital accumulation (especially of land) through political means. What is fascinating is that the old Boer *maatskappy* ideal of ordered near-anarchy had adherents who opposed creation of a proper state. This comes out in Keegan's discussion of the British Orange River Sovereignty's attempt to rally or coerce Boers into fighting Moshweshwe's Sotho in 1851. Those who traded with the Sotho, had agreements with them, or found the British more threatening, refused to go on commando, and stated their satisfaction with their "friend" Moshweshwe.[24]

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[24]Timothy Keegan, "The Making of the Orange Free State, 1846-54: Sub-imperialism, Primitive Accumulation and State Formation," *Journal of Imperial and Commonwealth History* 17, no. 1 (1988): 26–54. M.C.E. van Schoor, in "Politieke Groeperinge in Transgariep," *Agief-Jaarboek vir Suid-Afrikaanse Geskiedenis* 13, no. 2 (1950):111–2 (my translation), writes:

> Despite the confusion which prevailed along the frontier and the fact that there were Boers who had left the district to seek safety, there

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State formation set in train by the British continued after their withdrawal despite widespread opposition. The results were the Orange Free State (1854) and the South African Republic (Transvaal, 1856). These structurally weak states—"minimal" by default —somewhat vainly tried to replicate the Cape and Natal controls on native labor and pursued the usual rent-seeking policies dear to governors. For the moment, it seemed that the Voortrekkers had achieved the independence from Britain that they craved.

SMALL-SCALE VS. LARGE-SCALE GOALS, OR THE VELDCORNET'S LAMENT

A Boer veldcornet (officer) complained, somewhat defensively, to the Scottish traveler Thomas Pringle in 1840:

> We were living in a state of bitter feud and constant warfare with the natives, and both parties were intent on mutual extermination. But what had your Ficani done when *they* were destroyed by wholesale slaughter by your British commanders? . . . Here we had massacre in all its horrors. . . . But all this, I hear, your English missionaries defend or wink at, because it was done by Englishmen in authority, and does not tell against us unfortunate Boors.[25]

The veldcornet was essentially right in contrasting Boer expansion with British imperialism. Their goals, methods, and scale of operations differed. Britain's goals required, at each step of the way, large-scale solutions. British administrators undertook big wars against the natives to establish the kind of order they thought necessary. In time, their consolidation of southern Africa made possible a sort of modernizaton in which political coercion by "hut taxes" and the like made cheap native labor available on an industrial scale. Their conception of trade did not include the right of natives, including Boers, to refuse participation in foreign-directed economic development. As Lord Palmerston put it in 1841, "It is the business of Government to open and secure the roads of the merchant."[26]

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were still Boers who continued to live unmolested in the heart of Sotho territory. Many Boers even dared to go unarmed in Basutoland [the Sotho kingdom], to carry on intervourse freely with the natives, and on a flourishing basis to exchange the kaffer corn, which they acquired there, with traders at Burgersdorp for lead and gunpowder. These Boers made no secret of it and openly declared that they would rather choose the authority of Moshweshwe than that of the British.

[25]John Fisher, *The Afrikaners* (London: Cassell, 1969), pp. 54–55. The veldcornet was referring to a campaign waged in 1828.

[26]Flynt, "South Africa," p. 112.

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During their struggle for control of South Africa, the British learned to deploy humanitarian arguments against the Boers. In this connection, missionaries provided useful cover. Dr. John Phillip of the London Missionary Society, a man the Boers regarded as the ultimate foreign pseudophilanthropist, commented:

> the missionaries have been employed in locating the savages among whom they labor, teaching them industrious habits, creating a demand for British manufactures, and increasing their dependence on the colony. . . . Missionary stations are the most efficient strength of our colonies, and the cheapest and best military outposts a government can employ.[27]

Missionaries served as technical advisors to Christianized native chieftains, and contributed to frontier state-formation by showing native rulers (like those of the three Griqua states) how to build bureaucracies of their own.

Missionary and humanitarian pressure was but one source of British policy. From the 1830s to the 1880s, four major factions sought to direct British efforts: 1) imperialists for whom expansion of the empire was always a good; 2) humanitarians including missionaries; 3) *laissez faire* liberals; and 4) the "treasury-watchers." The *laissez faire* liberals wanted to keep intervention to a minimum, and the "treasury-watchers" cooperated with them to keep expenses down. The imperialists and humanitarians favored greater British control.[28]

To secure the route to India (it apparently could never be *too* secure), British officials wanted British sovereignty or at least "suzerainty" over the whole region. They also wished for a favorable climate for British investment and enterprise. Down to the 1880s, achievement of these goals was limited by reluctance to put much money into it. For the time being, Britain preferred the "imperialism of free trade": a cost-conscious use of political and military resources to incorporate, channel, and control the economies of peripheral areas. *Within* the new framework so created, trade would run its natural course. This strategy, which resembles the Open Door policy pursued by the United States from 1898, combined broad economic freedom for businessmen with the politics of empire. Benthamite "Radicals," Colonial Office bureaucrats, and

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[27]Flynt, "South Africa," p. 92.

[28]Flynt, "South Africa," p. 192. Muller sees approximately the same division in British policy-making circles. See *Die Oorsprong*, pp. 172, 177, 179.

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investors could all agree on this inexpensive, liberalized mercantilism. For them, cost-effective empire *was* "free trade."[29]

AN UNEASY BOER, BRITISH, AND NATIVE STANDOFF UNDERCUT BY MINERAL REVOLUTION

For the moment, British policy makers were satisfied with putting economic pressure on the Boer Republics while annexing native territories to cut them off from the sea. Imports purchased by Republican citizens came through the Cape and Natal, which put them at the mercy of the Colonies' tariff policies. This pressure led the Transvaal leaders to look for access to the Indian Ocean. They hoped to annex enough land to reach Delagoa Bay, a Portuguese possession, and by-pass real or potential colonial interference with their trade.

The discovery of gold and diamonds in and around the republics greatly complicated matters. The Transvaal and Orange Free State both claimed the diamond fields near present-day Kimberley. In August 1870, West Griqua chief Nicholas Waterboer, possibly encouraged by outsiders, claimed the Kimberley fields and petitioned for British intervention. Officials and journalists in the colonies suddenly discovered, once again, the cruel Afrikaner treatment of native labor and presented humanitarian arguments for British intervention. An allegedly neutral arbitrator—the Lieutenant Governor of Natal—awarded the disputed territory to Waterboer. Just as Britain had annexed the Sotho state in 1868 (Moshweshwe having come under attack when the war party in the Orange Free State got their way), so did they now annex Waterboer's claim.[30]

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[29]John Gallagher and Ronald Robinson, "The Imperialism of Free Trade," *Economic History Review* 6, no. 1 (1953): 1–15.

[30]Le Roy Hooker, *The Africanders: A Century of Dutch-English Feud in South Africa* (New York: Rand, McNally, 1900), pp. 144–47. J.J. Oberloster, in "Die Anneksasie van Griekwaland Wes," *Argief-Jaarboek vir Suid-Afrikaanse Geskiedenis* 8 (1945): 185 (my translation), comments:

> The annexation of [Waterboer's] Griqualand West was done on behalf of the poor, oppressed Griquas. The conscienceless oppressors were the Free State Boers. The British government, however, robbed them [the Griquas] of their territory and independence. Then it let seven years go by before making any provision for them. But the provision was of such a kind that the greatest part of the genuinely Griqua lands soon fell into the hands of avavaricious speculators. The Griquas believed themselves to have a legitimate grievance against their protectors and in 1878 they, along with other tribes, rose in rebellion. The British government suppressed the uprising mercilessly and many Griquas were shot dead, especially in the skirmish at Koegas. . . . The annexation . . . meant the downgall of the Griquas—not their salvation.

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Having lost this round, the Transvaal president was determined to gain access to the sea. He tried, and failed for the moment, to find foreign investors to build a railway line to Delagoa Bay. With their trade impeded by Britain and a native war under way, the Transvaal government was near collapse. Egged on by creditors and humanitarians, the British "annexed" the Transvaal in April 1877, allegedly to save the whole region "from the most calamitous circumstances." Just as things seemed settled, the British found themselves at war with the Bapedi (Mpedi) and Zulu peoples who were desperate to preserve some of their lands. A disastrous British defeat at Isandhlwana led to an expensive war to resolve matters to imperial satisfaction.[31]

In Britain, the Liberal statesman William Gladstone was campaigning on a platform of free trade and retrenchment. Encouraged by the prospect of imperial withdrawal, Transvalers proclaimed a republic and rose against British rule. The Orange Free State sent war materiel. Gladstone, now Prime Minister, reversed himself and tried to suppress the "rebellion." In December 1880, Boer commandos inflicted a stunning defeat on British forces at Majuba Hill. Busy with their primordially original crisis, Ireland, the Cabinet decided to make peace and concede the Transvalers' independence under a vague imperial "suzerainty" (not actually mentioned in the second draft treaty). The first Anglo-Boer War was over.

The "mineral revolution" did not work only to the benefit of the British. Discovery of deep-level gold at Witwatersrand (the "Rand"—possibly the original White Water problem) in 1886, as well as diamond deposits in the republics, brought an economic boom to the highveld. Foreign investors, miners, and mining engineers flocked to the republics, and Johannesburg became a colossal mining town overnight. "Unwittingly, British capitalists freed the Transvaal nationalists from the colonial yoke and made the republic the leading state in South Africa." Further, "[t]he key to the prosperity of southern Africa was falling into the hands of its most anti-imperialist *régime*."[32] As the Boer Republics became solvent,

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Oberholster lays much of the blame on Waterboer's agent, David Arnot, for fraudulently exaggerating Waterboer's territorial boundaries and then involving the British in the dispute.

[31]Quote in Flynt, "South Africa," p. 182. For an account of the Zulu War which blames the British for wrecking a stable situation, partly out of imperial security concerns and partly because of pressure from colonial politicians, see Jeff Guy, *The Destruction of the Zulu Kingdom: The Civil War in Zululand, 1879–1884* (London: Longman Group, 1979); also see Donald R. Morris, *The Washing of the Spears: The Rise and Fall of the Great Zulu Nation* (London: Cardinal, 1990).

[32]Ronald Robinson, John Gallagher, and Alice Denny, *Africa and the Victorians* (New York: St. Martins Press, 1961), pp. 210–11.

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plans for a railway to Delagoa Bay became realistic. The republics, having taken the measure of Britain's real respect for their independence, began buying modern arms from the German Reich.

This fed British imperial paranoia about the Germans, who—egged on by navalists and missionaries—had recently acquired a much needed colony in Southwest Africa (site of the "proverbial tributary"[33]). The cosmic plottings of Cecil Rhodes, mineral magnate, Cape politician, and imperial arch-manipulator, further inflamed the delicate situation. The stakes were now higher than the unedifying petty "economic warfare" which had prevailed between the republics and the colonies (and even among the republics).

The emerging class of "Randlords," or mining magnates, jumped-up financial speculators,[34] and mining engineers (many of them Americans) focussed on one important goal: much more than ridding themselves of the Transvaal's state dynamite monopoly, they wanted a reliable and predictable supply of cheap native labor for industrial mining processes. Barney Barnato, one of the jumped-up magnates, ridiculed the Transvaal government, saying, "[i]t is not a government at all, but an unlimited company of some twenty thousand shareholders."[35]

This would not do. What was needed was a powerful regional state capable of coercing native labor on an enormous scale. Already by 1899, the mines were employing 160,000 Africans at Witwatersrand,[36] and if they were to cut costs, they needed greater leverage over native labor than the Boer Republics could give them. Engineers, the New Class of natural Comteans, supplied ideological underpinnings for unification and centralization, and "sought the interventionist state of the 'experts.'"[37]

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[33]"Excrement estuary" in present-day Namibia, as reported by Andrew Dinwoodie, "Beyond the Vestiges of Colonialism," *The Independent*, 13 May 1989, Weekend, p. 48. The poor Germans obviously didn't know what they were stepping into.

[34]Arendt, *Origins of Totalitarianism*, pp. 197–204. She sees the South African situation as an example of her theme of the "alliance of capital and mob." Jeff Hummel has suggested to me that the rapid emergence of a few powerful mining concerns may have to do with the absence of a clearly articulated property-rights system in the Transvaal.

[35]Quoted in Arendt, *Origins of Totalitarianism*, p. 199.

[36]Ronald Hyam, *Britain's Imperial Century, 1815–1914* (New York: Harper and Row, 1976), p. 297.

[37]On the magnates' and engineers' goals, see Shula Marks and Stanley Trapido, "Lord Milner and the South African State," *History Workshop* 8 (Autumn 1979): 60–62. Anthony Atmore and Shula Marks, in "The Imperial Factor in South Africa in the Nineteenth Century: Towards a Reassessment." in E.F. Penrose, ed., *European Imperialism and the Partition of Africa* (London: Frank Cass, 1975), pp. 105–139 (quotation at p.

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Although Rhodes did not live to see his work consummated, it is worth getting his "take" on the native question. Running for office in 1887, he said, "there must be Pass Laws and Peace Preservation Acts. . . . We must adopt a system of despotism, such as works so well in India, in our relations with the barbarians of South Africa."[38] Already in the policies adopted by the Chamber of Mines, the Rhodes-dominated mining interest group, we can discern the outlines of the state-capitalist pattern with which *Apartheid* ran wild. Political regulation of natives would keep labor below its free-market price[39]; large-scale bureaucratic fiddling would replace the direct patriarchal style of management of the Boers.

The agitations of the *uitlanders*, as the Boers called the foreign miners who inundated their societies, seemed made-to-order to give a progressive cover to these larger goals. Herbert Spencer wrote to a friend that "the outlanders were a swarm of intruders and had no right to complain of the social regime. . . . The advocacy of annexation is nothing more than a continuation of our practice of political burglary."[40] Transvaal President "Oom" Paul Kruger got at the essentials when he told the British at the Bloemfontein conference of June 1899: "It is my country that you want."[41]

A War for Union or Independence: The Second Anglo-Boer War

We shall pass over the Jameson Raid fiasco, when the *uitlanders* failed to rise, and go straight to the outbreak of war—following the usual intentionally futile negotiations—on October 9, 1899. For the colonies, the British authorities, and the mining interest, the Second Anglo–Boer War (or Boer War) was a war for Union. For the republics, it was a war for independence. Africans, one supposes, had mixed feelings about the whole thing, as 100,000 of them served the British and the Boers as laborers, guides, and drivers. It was

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109), write that the cause of the war was "the failure of the Afrikaner societies to fulfill the role of collaborating groups to the satisfaction of the gold-mining industry." On the need for local cooperation, see Ronald Robinson, "Non-European Foundations of European Imperialism: Sketch for a Theory of Collaboration," in E.R.J. Owen and R.B. Sutcliffe, eds., *Studies in the Theory of Imperialism* (London: Longman Group, 1972), pp. 117–140.

[38]Rhodes quoted in Fisher, *Afrikaners*, 127.

[39]Compare Mark Thornton, "Slavery, Profitability, and the Market Process," *Review of Austrian Economics* 7, no. 2 (1994): 21–47, for the dependence of coercive labor systems on state power.

[40]Spencer quoted in Flynt, "South Africa," p. 235.

[41]Kruger quoted in Hyam, *Britain's Imperial Century*, p. 307.

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the British who broke the unwritten rule (as usual?) and enrolled some 10,000 native soldiers.[42]

As horsemen famous for their marksmanship, the Boers had an initial advantage. As the Empire struck back, bringing in forces from settler colonies (Australia, New Zealand, and Canada), the Boers undertook guerrilla war, which came naturally to people who had been "on commando" for two centuries. John Ellis writes:

> [t]hough these pious, Bible-carrying stalwarts would turn in their grave for being so maligned, one could even say that their commandos had more in common with the Anarchist units of the Spanish Civil War, than with any other recent type of European military formation.[43]

To fight these partisans, Britain had to put four times as many men in the field as Boer guerrillas, and "concentrate" Boer women and children in barbed-wire enclosures where some 26,000 died.

The results were a Vietnam-like blow to the Empire, soon to be embroiled at home with syndicalism, feminism, and Ireland, and a split in the Liberal Party between "pro-Boers" who opposed the war (or at least its methods) and Liberal Imperialists who supported it. (This is one sense in which one can be pro-Boer.) "Social imperialists" of all parties supported the war. The playwright Bernard Shaw supported it because he disliked "stray little states lying about in the way of great powers."[44]

Civilized opinion sympathized with the Boers, with the major exception of the ruling elite of the United States, which was conducting a gory counter-insurgency in the Philippine Islands. Speaking for the American expansionists, the *New York Times* said,

> [i]t is not the machinations of Cecil Rhodes or any other individual with which the Boers are contending. . . . It is the 'Zeitgeist,' the 'spirit of the age.' . . . There is no room in the world for 'peculiar people' who insist on nonconformity, and upon taking up more room than belongs to them or than they can use to the utmost advantage. . . . They must conform, like the Mormon, or be extinguished like the North American Indian.[45]

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[42]Thomas Pakenham, *The Boer War* (New York: Random House, 1979), p. xxi. Probably the best study.

[43]John Ellis, *A Short History of Guerrilla Warfare* (London: Ian Allan, 1975), p. 119. Cf. Fisher, *The Africaners*, pp. 164–67. See also George M. Frederickson, "Why Did the Confederacy Not Fight a Guerrilla War after the Fall of Richmond: A Comparative View" ([pamphlet] Gettysburg: Gettysburg College, 1996).

[44]Quoted in Norman and Jeanne MacKenzie, *The Fabians* (New York: Simon and Schuster, 1977), p. 273.

[45]Quoted in Thomas J. Noer, *Briton, Boer and Yankee: The United States and South Africa, 1870–1914* (Kent, Ohio: Kent State University Press, 1978), 64.

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The reluctant anti-imperialist William Jennings Bryan pointed out the other side of the coin:

> Our refusal to recognize the rights of the Filipinos to self-government will embarrass us if we express sympathy with those in other lands who are struggling to follow the doctrines set forth in the Declaration of Independence. . . . Suppose we sent our sympathy to the Boers? In an hour England would send back, 'What about the Filipinos?'

There was no danger of that, as Secretary of State John Hay did all he could to support the British cause in South Africa.[46]

THE WORLD, AND THE ENEMIES, THE BRITISH MADE, OR WAS THE IMPERIAL FACTOR SO LIBERAL?

In the end, the Boers could not prevail militarily. They fought to live and to preserve their society and people, and when continued fighting threatened those things, they chose peace. The country—already injured by cattle-killing rinderpest and drought before the war—was in shambles. But the Boer nation, the Afrikaner people, had been formed by the war. Many of the Cape Dutch, whose ancestors did not trek, had come over to the side of their rustic cousins once the war got under way.

The years immediately following the Boer capitulation—interestingly called "Reconstruction"—revealed the actual bearing of imperial policy. Lord Milner's reordering of the South African political economy resembles Reconstruction in the United States with the difference that, absent any "social Bonapartist" impulse at all,[47] South Africa's Union-savers could go directly to issues of power and wealth. Of the four factions present in mid-19th-century debates over South African policy, the *laissez faire* liberals and humanitarians were now sidelined, the "treasury-watchers" had stepped aside, leaving the field to the empire-builders, who held it long enough to conquer the republics and dictate the broad outlines of political–economic order.

With regional hegemony and British control of the leading economic sectors (mining and banking) secured, the imperium delegated power over other details to the four self-governing colonies

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[46]Quoted in Noer, *Briton, Boer, and Yankee*, p. 87. On Hay's complete lack of neutrality, see Kenton J. Clymer, *John Hay: The Gentleman as Diplomat* (Ann Arbor: University of Michigan Press, 1975), pp. 158–61.

[47]I applied Edvard Kardelj's notion of "social Bonapartism" to U.S. Reconstruction in "The War for Southern Independence: A Radical Libertarian Analysis," *Journal of Libetarian Studies* 3, no. 1 (1979): 39.

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(and Union after 1910) confident they would do the right thing respecting native "rights" and native labor. After all, everyone agreed on the latter question. It does little good for the Cape Liberals and their allies, the free-market economists (off looking for the real killers, I suppose), to speak of the "failure" of the imperium to be liberal on native rights down to 1910, and then still praise the British and condemn the Boers. As Anthony Atmore and Nancy Westlake ask, "had British intentions ever been other than the maintenance of this [white] supremacy?"[48] The Afrikaner-based the South African Party called for "placing the Native question above party politics."[49] The English settlers' Unionist Party did not disagree.

Out of this period of renewed state-building and white political competition within the imperial frame came the famous "alliance of gold and maize." As Shula Marks and Stanley Trapido write, "it was during the reconstruction period that many of the guidelines of twentieth-century segregationist policies were set out."[50] Just as British wars against the Xhosa, Zulus, and others had been more disastrous for natives than their fights with Voortrekkers, so too was the subimperial Union government better able to implement comprehensive coercive labor policies.

As in the American South, segregation *was* the relatively "liberal" alternative at the beginning of this century, embraced by advanced thinkers and scientific racialists like Jan Christian Smuts and Jan Hofmeyr. The interesting Natal writer and politician Maurice S. Evans actually visited the Southern states to get a comparative perspective on segregationist policies.[51]

With the predictable failure of Milner's policy of Anglicization, Afrikaner political entrepreneurs competed with their English South African counterparts to control the economy. Continuing the struggle by other means, Afrikaner nationalists (along with

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[48]Anthony Atmore and Nancy Westlake, "A Liberal Dilemma: A Critique of the Oxford History of South Africa," *Race* 14, no. 2 (1972): 117.

[49]S.A.P. platform quoted in Fisher, *Africaners*, p. 215.

[50]For "gold and maize" as the basis of a South African "Prussian Road to Capitalism," see, out of many accounts, Stanley Trapido, "South Africa in a Comparative Studies of Industrialization," *Journal of Development of Studies* 7, no. 3 (1971): 309–20. Quote from Marks and Trapido, "Lord Milner and the South African State," p. 72.

[51]See generally, John W. Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge: Cambridge University Press, 1982); Maurice S. Evans, *Black and White in the Southern States* (London: Longman, Green, 1915). On Hofmeyr's tightrope act, as the most liberal of the group, see generally, Alan Paton, *South African Tragedy: The Life and Times of Jan Hofmeyr* (New York: Charles Scribner's Sons, 1965). On Smuts's view of the "native problem," see J.C. Smuts, *Jan Christian Smuts* (London: Cassell, 1952), pp. 303–13.

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their opponents) built up a protectionist, corporatist, interventionist state apparatus which could easily have earned the admiration of Mexico's P.R.I. (all of this subject to the paradoxes of "*Herrenvolk* democracy"[52]). The imperium ignored these exercises in mercantilism, which had no important impact on Britain's strategic and economic interests. Anyone who thought the British were a global force consistently favorable to free markets had not looked at India or (inevitably) Ireland.[53] As part of asserting *baaskap* ("domination") in the countryside (this is the maize part of the marriage), Native Land Acts of 1913 and 1936 eliminated a prosperous African peasant stratum called into being by the market from the last decades of the 19th century.[54]

Afrikaner Nationalists had learned from the British that control over economic life was the essence of politics. Their nationalism—with its Calvinism, racialism, and a positive Boer self-image—was an ideological force *not* reducible to an economic base.[55] Their corporatism was the expression (however "irrational" economically) of a need to control their own destiny, a modernization of their Trek to escape outsiders' rule. National Party victory in 1948 inflicted a political Majuba Hill on English South Africa. In the hands of Daniel F. Malan, Hendrik Verwoerd, and B. J. Vorster, the South African state that the British had forced on the Afrikaners went in for gigantic, teleocratic social engineering seldom seen outside the Soviet bloc or the United States post-1954. According to Rian Malan, Daniel Malan was "a classic early-20th century intellectual, a utopian social engineer inclined to speak of socialism as a 'passionate and imperious and demand for justice'. . . ."[56] *Apartheid*, "separate development," which involved a genuine idealism for some of its supporters, created a monstrously sclerotic bureaucratic system out of which P.W. Botha, cast in the role of a southern Gorbachev, tried—a bit tardily—to reform his way.

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[52]Kenneth P. Vickery, "'Herrenvolk' Democracy and Egalitarianism in South Africa and the U.S. South," *Comparative Studies in Society and History* 16, no. 3 (June 1974): 309–28. Cf. George M. Frederickson, *The Arrogance of Race: Historical Perspectives on Slavery, Racism, and Social Inequality* (Middletown: Wesleyan University Press, 1988), chap. 17, "The South and South Africa: Political Foundations of Segregation," pp. 254–94.

[53]Hyam, in *Britain's Imperial Century*, pp. 216–17, notes that the Empire ran India as a form of state socialism. On Ireland, see the redoubtable agronomist Raymond Crotty, *Ireland in Crisis* (Dingle: Brandon Books, 1986).

[54]Out of a vast literature, the most important studies may be C.M. Tatz, *Shadow and Substance in South Africa* (Pietermaritzburg: University of Natal Press, 1962); and Colin Bundy, *The Rise and Fall of the South African Peasantry* (London: Heinemann, 1979).

[55]Akenson, *God's Peoples*, p. 79.

[56]Rian Malan, *My Traitor's Heart* (New York: Atlantic Monthly Press, 1990), p. 21.

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STRUCTURAL PRO-BOERISM

So we return from this dismal excursion still asking, Was the imperial factor all that liberal? Taking up the South Africanist Marxists' burden, I think we can say that the Empire probably made the overall situation worse, much as the Yankees did in a comparable war for Union. While perhaps too much can be made of the New South's "Prussian Road to Capitalism" under the Yankees' supervision, something like that did happen, and the South African case seems a species of the same genus. I will not belabor the parallels, but the Great Trek, which took perhaps a sixth of the European population out of the Cape, looks like a pre-emptive secession movement by migration.[57] Southerners and Afrikaners had their bad habits with respect to nonwhite labor, but these did not excite much comment until both peoples stood in the way of goals important to external imperial forces. In both cases, the imperial factor proclaimed a degree of emancipation for servants or slaves, unified refractory separatists by force, and then, forgetting its alleged high ideals, turned over the Negro or Native Question to the defeated parties and went on to resolve the issues it thought really important.

Certainly, the British had the habit of showing up, offering to serve, ordering everyone about, and then expecting to be admired for it. The Yankees did their best to emulate the practice. In South Africa, the benevolent British paternalism (so admired in Canada) seems present mostly by its absence. Imperial political control perhaps froze Southerners and Boers into the politics of *Herrenvolk* democracy by precluding other roads to capitalism and bourgeois revolution.[58]

In any event, the subjective attitudes of Boers, Southerners, and outsiders may not be the most important consideration. The question of scale may be more important. State-building beyond some point (or indeed, at all) appears to create as many problems as it is supposed to solve. Joseph Tainter writes that "bad government is a *nor-*

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[57]Muller, *Die Oorsrpong*, p. 13, states that by 1840, 20% of the Boers had trekked out of the Eastern districts, or about 9% of the population of the whole Cape Colony.

[58]See Stromberg, "War for Southern Independence," pp. 46–48. Barrington Moore, Jr. developed the notion of a Prussian Road to Capitalism in *Social Origins of Dictatorhip and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966). Jonathan M. Wiener applied the concept to the New South in *Social Origins of the New South: Alabama 1860–1885* (Baton Rouge: Louisiana State University Press, 1978). Probably neither would care for my giving the Yankees and the British a share of the responsibility for such outcomes.

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mal cost of government."[59] One need not be an anarchist to suspect that larger governments might well do more harm than smaller ones. This possibility is precisely what the Empires supplied when they rationalized government and economy in the American South and in South Africa.

It is the alternative of a polycentric, pluralistic, and decentralized southern Africa toward which the work of the Marxist-oriented school of younger South African historians points. Without the Empire's state-building efforts, the African chiefdoms, incipient African and Coloured (Griqua) states, and Boer *maatskappye* would have been unable to do large-scale harm, and would have come to varying understandings with one another. Localized violence might disrupt other activities here and there, but no one party could have imposed its solutions on all parties. Market relations, which had begun to revolutionize society on the frontier, would have been the main unifying force tying these societies together. (How's *that* for "diversity"?) If market relations tend to erode coercive labor practices and other precapitalist institutions, as economists writing in the Cape Liberal tradition have implied, it seems clear that they would have eroded more successfully coercions existing in minimal states and chiefdoms.[60] Racialism would not have been much of a *political* program in such circumstances. (I am also implicitly assuming the right of the Afrikaners to defend their society and property and to resist being jammed into third parties' multicultural teleologies.)

By the 1840s, arguably, British power was getting in the way of this scenario. "Legassick," de Villiers remarks, "attributed the Griqua failure to the British annexation of the Orange River Sovereignty" rather than to the Voortrekkers.[61] British efforts in the O.R.S. destabilized the West Griqua state and at the same time stimulated Afrikaner state-formation in the future Orange Free State. On their own, the Orange River Boers might have continued

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[59]Joseph Tainter, *The Collapse of Complex Societies* (Cambridge: Cambridge University Press, 1988), p. 72.

[60]Cf. Jeffrey Rogers Hummel's discussion of how Confederate independence would have undermined slavery, in *Emancipating Slaves, Enslaving Free Men* (Chicago: Open Court, 1996), 353-55.

[61]De Villiers, *White Tribe Dreaming*, p. 96. See Martin Legassick, "The Northern Frontier to c. 1840: The Rise and Decline of the Griqua People," in Richard Elphick and Hermann Giliomee, eds., *The Shaping of South African Society, 1652–1840* (Middletown: Wesleyan University Press, 1989), pp. 358–420. On p. 405, Leggasick writes: "The establishment of white supremacy in the Transorangia, and the marginalisation of the Griqua in the area, followed not so much because of a dramatic increase in the power of white frontiersmen—but more because of economic and political changes in the era of British sovereignty."

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to find their *maatskappy* organization, their commandos, and their market relations with Moshweshwe adequate enough for their purposes. On their own, these patriarchal Calvinist anarchists might have taken a while to catch on to the rent-seeking and land-alienating opportunities a state presents.

The Boers were far from perfect. They trekked into the wilderness on an Old Testament errand and to escape hostile authorities. (Only self-restraint and lack of space keeps me from developing the Mormon parallel.[62]) Had the Boers escaped successfully and avoided incorporation into the Empire,[63] they would have been hard pressed, in practical terms, to wreak the havoc that their leaders got them into after 1948, when Afrikaner nationalism took a decidedly fascist turn and the South African state systematized the political coercion of African labor.

Since the disastrous French Revolution, we have had time to reflect on how to realize liberal values, especially in relation to the scale of political organization. If we can come even part of the way with the Southerners and Afrikaners, we may come to see that in an imperfect world, it is generally better to support the forces of devolution, decentralization, separatism, and particularism,[64] and —if necessary—teach them pure economic theory later. This approach, which substitutes for the over-engineered Prussian Road a sort of Austrian country road, perhaps offers the best line of attack at a time when big centralized states and empires are experiencing a well-earned loss of legitimacy.

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[62]For a very suggestive beginning, see D.W. Meinig, "The Mormon Nation and the American Empire," *Journal of Mormon History* 22, no. 1 (Spring 1996): 33–51.

[63]Here I wish to acknowledge the contribution of Timothy J. Gillin, then at the University of New South Wales, who wrote me in 1980 to suggest that my analysis in "The War for Southern Independence" had direct application to the South African case.

[64]For a defense of particularism, see John G. Gagliardo, "Cosmopolitanism and Federalism: Germany's Neglected Tradition," *Continuity: A Journal of History* 4/5 (Spring–Fall 1982): 71–92. For similar approaches to German political history which are also economically informed (and mildly *grossdeutsch*/decentralist), see Wilhelm Röpke, *The Solution of the German Problem* (New York: G. Putnam's Sons, 1946); and Ludwig von Mises, *Omnipotent Government* (New Haven, Conn.: Yale University Press, 1944). And Americans, certainly, ought to be able to sympathize with Paul Kruger's words: "*Geboren onder de Engelsche vlag, wens ik niet daaronder te sterven*" ["Born under the English flag, I do not wish to die under it"], in "President Kruger's Last Message to His People," F.A. van Jaarsveld, ed., *Honderd Basiese Dokumente by die Studie van die Suid-Afrikaanse Geskiedenis, 1648–1961* (Kaapstad: Nasionale Opvoedkundige Uitgewery Beperk, 1971).

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THE PRIVATE PRODUCTION OF DEFENSE

Hans-Hermann Hoppe*

Among the most popular and consequential beliefs of our age is the belief in collective security. Nothing less significant than the legitimacy of the modern state rests on this belief.

I will demonstrate that the idea of collective security is a myth that provides no justification for the modern state, and that all security is and must be private. Yet, before coming to the conclusion let me begin with the problem. First, I will present a two-step reconstruction of the myth of collective security, and at each step raise a few theoretical concerns.

The myth of collective security can also be called the Hobbesian myth. Thomas Hobbes, and countless political philosophers and economists after him, argued that in the state of nature, men would constantly be at each others' throats. *Homo homini lupus est.* Put in modern jargon, in the state of nature a permanent underproduction of security would prevail. Each individual, left to his own devices and provisions, would spend too little on his own defense, and hence, permanent interpersonal warfare would result. The solution to this presumably intolerable situation, according to Hobbes and his followers, is the institution of a state. In order to institute peaceful cooperation among themselves, two individuals, A and B, require a third independent party, S, as ultimate judge and peacemaker. However, this third party, S, is not just another individual, and the good provided by S, that of security, is not just another "private" good. Rather, S is a *sovereign* and has as such two unique powers. On the one hand, S can insist that his *subjects*, A and B, not seek protection from anyone but him; that is, S is a compulsory territorial monopolist of protection. On the other hand, S can determine unilaterally how much A and B must spend on their own security; that is, S has the power to impose taxes in order to provide security "collectively."

In commenting on this argument, there is little use in quarreling over whether man is as bad and wolf-like as Hobbes supposes, except to note that Hobbes's thesis obviously cannot mean that man is driven only and exclusively by aggressive instincts. If

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this were the case, mankind would have died out long ago. The fact that he did not demonstrates that man also possesses reason and is capable of constraining his natural impulses. The quarrel is only with the Hobbesian solution. Given man's nature as a rational animal, is the proposed solution to the problem of insecurity an improvement? Can the institution of a state reduce aggressive behavior and promote peaceful cooperation, and thus provide for better private security and protection? The difficulties with Hobbes's argument are obvious. For one, regardless of how bad men are, S —whether king, dictator, or elected president—is still one of them. Man's nature is not transformed upon becoming S. Yet how can there be better protection for A and B, if S must tax them in order to provide it? Is there not a contradiction within the very construction of S as an expropriating property protector? In fact, is this not exactly what is also—and more appropriately—referred to as a *protection racket*? To be sure, S will make peace between A and B but only so that he himself in turn can rob both of them more profitably. Surely S is better protected, but the more he is protected, the less A and B are protected from attacks by S. Collective security, it would seem, is not better than private security. Rather, it is the private security of the state, S, achieved through the expropriation, i.e., the economic disarmament, of its subjects. Further, statists from Thomas Hobbes to James Buchanan have argued that a protective state S would come about as the result of some sort of "constitutional" contract.[1] Yet, who in his right mind would agree to a contract that allowed one's protector to determine unilaterally—and irrevocably—the sum that the protected must pay for his protection; and the fact is, no one ever has![2]

Let me interrupt my discussion here, and return to the reconstruction of the Hobbesian myth. Once it is assumed that in order to institute peaceful cooperation between A and B it is necessary to have a state S, a two-fold conclusion follows. If more than one state exists, S1, S2, S3, then, just as there can presumably be no peace among A and B without S, so there can be no peace between

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[1]James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962); James M. Buchanan, *The Limits of Liberty* (Chicago: University of Chicago Press, 1975); for a critique, see Murray N. Rothbard, "Buchanan and Tullock's *Calculus of Consent*," in Murray N. Rothbard, *The Logic of Action*, vol. 2, *Applications and Criticism from the Austrian School* (Cheltenham: Edward Elgar, 1995); Murray N. Rothbard, "The Myth of Neutral Taxation," in *The Logic of Action*, vol. 2.; Hans-Hermann Hoppe, *The Economics and Ethics of Private Property* (Boston: Kluwer, 1993), chap. 1.

[2]See on this particular point, Lysander Spooner, *No Treason: The Constitution of No Authority* (Larkspur, Colo.: Pine Tree Press, 1996).

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the states S1, S2, and S3 as long as they remain in a state of nature (i.e., a state of anarchy) with regard to each other. Consequently, in order to achieve *universal* peace, political centralization, unification, and ultimately the establishment of a single world government are necessary.

Commenting on this argument, it is first useful to indicate what can be taken as non-controversial. To begin with, the argument is correct, as far as it goes. If the premise is correct, then the consequence spelled out follows. The empirical assumptions involved in the Hobbesian account appear at first glance to be borne out by the facts, as well. It is true that states are constantly at war with each other, and a historical tendency toward political centralization and global rule does indeed appear to be occurring. Quarrels arise only with the explanation of this fact and tendency, and the classification of a single unified world state as an improvement in the provision of private security and protection. First, there appears to be an empirical anomaly for which the Hobbesian argument cannot account. The reason for the warring among different states S1, S2, and S3, according to Hobbes, is that they are in a state of anarchy *vis–à–vis* each other. However, before the arrival of a single world state not only are S1, S2, and S3 in a state of anarchy relative to each other but in fact every subject of one state is in a state of anarchy *vis–à–vis* every subject of any other state. Accordingly, there should exist just as much war and aggression between the private citizens of various states as between different states. Empirically, however, this is not so. The private dealings between foreigners appear to be significantly less war-like than the dealings between different governments. Nor does this seem to be surprising. After all, a state agent S, in contrast to every one of its subjects, can rely on domestic taxation in the conduct of his foreign affairs. Given his natural human aggressiveness, however pronounced it may initially be, is it not obvious that S will be more brazen and aggressive in his conduct toward foreigners if he can externalize the cost of such behavior onto others? Surely, I am willing to take greater risks and engage in more provocation and aggression if I can make others pay for it. And surely there is a tendency of one state—one protection racket—to want to expand its territorial protection monopoly at the expense of other states and thus bring about, as the ultimate result of interstate competition, world government.[3] But how is this an improvement in the provision of private secur-

[3]See Hans-Hermann Hoppe, "The Trouble With Classical Liberalism," *Rothbard–Rockwell Report* 9, no. 4 (1998).

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ity and protection? The opposite seems to be the case. The world state is the winner of all wars and the last surviving protection racket. Doesn't this make it particularly dangerous? And will not the physical power of any single world government be overwhelming as compared to that of any one of its individual subjects?

THE EMPIRICAL EVIDENCE

Let me pause here in my abstract theoretical considerations to take a brief look at the empirical evidence bearing on the issue at hand. As noted at the outset, the myth of collective security is as widespread as it is consequential. I am not aware of any survey on this matter, but I would venture to predict that the Hobbesian myth is accepted more or less unquestioningly by well over 90 percent of the adult population. However, to believe something does not make it true. Rather, if what one believes is false, one's actions will lead to failure. What about the evidence? Does it support Hobbes and his followers, or does it confirm the opposite anarchist fears and contentions?

The U.S. was explicitly founded as a protective state à la Hobbes. Let me quote to this effect from Jefferson's *Declaration of Independence*: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with inalienable rights; that among these are life, liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." Here we have it: The U.S. government was instituted to fulfill one and only one task: the protection of life and property. Thus, it should provide the perfect example for judging the validity of the Hobbesian claim as to the status of states as protectors. After more than two centuries of protective statism, what is the status of our protection and peaceful human cooperation? Was the American experiment in protective statism a success?

According to the pronouncements of our state rulers and their intellectual bodyguards (of whom there are more than ever before), we are better protected and more secure than ever. We are supposedly protected from global warming and cooling, from the extinction of animals and plants, from the abuses of husbands and wives, parents and employers, from poverty, disease, disaster, ignorance, prejudice, racism, sexism, homophobia, and countless other public enemies and dangers. In fact, however, matters are strikingly different. In order to provide us with all this protec-

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tion, the state managers expropriate more than 40 percent of the incomes of private producers year in and year out. Government debt and liabilities have increased without interruption, thus increasing the need for future expropriations. Owing to the substitution of government paper money for gold, financial insecurity has increased sharply, and we are continually robbed through currency depreciation. Every detail of private life, property, trade, and contract is regulated by ever higher mountains of laws (legislation), thereby creating permanent legal uncertainty and moral hazard. In particular, we have been gradually stripped of the right to exclusion implied in the very concept of private property. As sellers we cannot sell to and as buyers we cannot buy from whomever we wish. And as members of associations we are not permitted to enter into whatever restrictive covenant we believe to be mutually beneficial. As Americans, we must accept immigrants we do not want as our neighbors. As teachers, we cannot get rid of lousy or ill-behaved students. As employers, we are stuck with incompetent or destructive employees. As landlords, we are forced to cope with bad tenants. As bankers and insurers, we are not allowed to avoid bad risks. As restaurant or bar owners, we must accommodate unwelcome customers. And as members of private associations, we are compelled to accept individuals and actions in violation of our own rules and restrictions. In short, the more the state has increased its expenditures on social security and public safety, the more our private property rights have been eroded, the more our property has been expropriated, confiscated, destroyed, or depreciated, and the more we have been deprived of the very foundation of all protection: economic independence, financial strength, and personal wealth.[4] The path of every president and practically every member of Congress is littered with hundreds of thousands if not millions of nameless victims of personal economic ruin, financial bankruptcy, impoverishment, despair, hardship, and frustration.

The picture appears even bleaker when we consider foreign affairs. Never during its entire history has the continental U.S. been territorially attacked by any foreign army. (Pearl Harbor was the result of a preceding U.S. provocation.) Yet the U.S. has the distinction of having possessed a government that declared war against a large part of its own population and engaged in the wanton murder of hundreds of thousands of its own citizens. Moreover, while the relations between American citizens and foreign-

[4]See Hans-Hermann Hoppe, "Where The Right Goes Wrong," *Rothbard–Rockwell Report* 8, no. 4 (1997).

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ers do not appear to be unusually contentious, almost from its very beginnings the U.S. government pursued relentless aggressive expansionism. Beginning with the Spanish–American War, culminating in World War I and World War II, and continuing to the present, the U.S. government has become entangled in hundreds of foreign conflicts and risen to the rank of the world's dominant imperialist power. Thus, nearly every president since the turn of this century also has been responsible for the murder, killing, or starvation of countless innocent foreigners all over the world. In short, while we have become more helpless, impoverished, threatened, and insecure, the U.S. government has become ever more brazen and aggressive. In the name of national security, it defends us, equipped with enormous stockpiles of weapons of aggression and mass destruction, by bullying ever new "Hitlers," big or small, and all suspected Hitlerite sympathizers anywhere and everywhere outside of the territory of the U.S.[5]

The empirical evidence thus seems clear. The belief in a protective state appears to be a patent error, and the American experiment in protective statism a complete failure. The U.S. government does not protect us. To the contrary, there exists no greater danger to our life, property, and prosperity than the U.S. government, and the U.S. president in particular is the world's single most threatening and armed danger, capable of ruining everyone who opposes him and destroying the entire globe.

HOW TO THINK ABOUT THE STATIST RESPONSE

Statists react much like socialists when faced with the dismal economic performance of the Soviet Union and its satellites. They do not necessarily deny the disappointing facts, but they try to argue them away by claiming that these facts are the result of a systematic discrepancy (deviancy) between "real" and "ideal" or "true" statism, respectively socialism. To this day, socialists claim that "true" socialism has not been refuted by the empirical evidence, and everything would have turned out well and unparalleled prosperity would have resulted, if only Trotsky's, or Bucharin's, or better still their very own brand of socialism, rather than Stalin's, had been implemented. Similarly, statists interpret all seemingly contradictory evidence as only accidental. If only some other president had come to power at this or that turn in history, or if only this or that constitutional

[5]See John Denson, ed., *The Costs of War* (New Brunswick, N.J.: Transaction Publishers, 1997).

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change or amendment had been adopted, everything would have turned out beautifully, and unparalleled security and peace would have resulted. Indeed, this may still happen in the future, if their own policies are employed.

We have learned from Ludwig von Mises how to respond to the socialists' evasion (immunization) strategy.[6] As long as the defining characteristic —the essence—of socialism, i.e., the absence of the private ownership of the factors of production, remains in place, no reform will be of any help. The idea of a socialist economy is a *contradictio in adjecto*, and the claim that socialism represents a higher, more efficient mode of social production is absurd. In order to reach one's own ends efficiently and without waste within the framework of an exchange economy based on division of labor, it is necessary that one engage in monetary calculation(cost-accounting). Everywhere outside the system of a primitive self-sufficient single household economy, monetary calculation is the sole tool of rational and efficient action. Only by being able to compare inputs and outputs arithmetically in terms of a common medium of exchange (money) can a person determine whether his actions are successful or not. In distinct contrast, socialism means to have no economy, no economizing, at all, because under these conditions monetary calculation and cost-accounting is impossible by definition. If no private property in the factors of production exists, then no prices for any production factor exist; hence, it is impossible to determine whether or not they are employed economically. Accordingly, socialism is not a higher mode of production but rather economic chaos and regression to primitivism.

How to respond to the statists' evasion strategy has been explained by Murray N. Rothbard.[7] But Rothbard's lesson, while equally simple and clear and with even more momentous implications, has remained to this day far less known and appreciated. So long as the defining characteristic—the essence—of a state remains in place, he explained, no reform, whether on the level of personnel or of the constitution, will be to any avail. *Given* the principle of government—judicial monopoly and the power to tax—any notion of limiting its power and safeguarding individual life and property is illusory. Under monopolistic auspices the price of justice and protection must rise and its qual-

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[6]Ludwig von Mises, *Socialism* (Indianapolis, Ind.: Liberty Classics, 1981); Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Boston: Kluwer, 1989), chap. 6.

[7]Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), esp. chaps. 22 and 23.

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ity must fall. A tax-funded protection agency is a contradiction in terms and will lead to ever more taxes and less protection. Even if a government limited its activities exclusively to the protection of pre-existing property rights (as every protective state is supposed to do), the further question of *how much* security to provide would arise. Motivated (like everyone else) by self-interest and the disutility of labor, but with the unique power to tax, a government's answer will invariably be the same: to *maximize expenditures* on protection —and almost all of a nation's wealth can conceivably be consumed by the cost of protection—and at the same time to *minimize* the *production* of protection. Furthermore, a judicial monopoly must lead to a deterioration in the quality of justice and protection. If one can only appeal to government for justice and protection, justice and protection will be perverted in favor of government, constitutions, and supreme courts notwithstanding. After all, constitutions and supreme courts are *state* constitutions and courts, and whatever limitations to government action they might contain is determined by agents of the very institution under consideration. Accordingly, the definition of property and protection will continually be altered and the range of jurisdiction expanded to the government's advantage.

Hence, Rothbard pointed out, it follows that just as socialism cannot be reformed but must be abolished in order to achieve prosperity, so can the institution of a state not be reformed but must be abolished in order to achieve justice and protection. "Defense in the free society (including such defense services to person and property as police protection and judicial findings)," Rothbard concluded, "would therefore have to be supplied by people or firms who (a) gained their revenue voluntarily rather than by coercion and (b) did not—as the State does—arrogate to themselves a compulsory monopoly of police or judicial protection .... defense firms would have to be as freely competitive and as noncoercive against noninvaders as are all other suppliers of goods and services on the free market. Defense services, like all other services, would be marketable and marketable only."[8] That is, every private property owner would be able to partake of the advantages of the division of labor and seek better protection of his property than that afforded through self-defense by cooperation with other owners and their property. Anyone could buy from, sell to, or otherwise contract with anyone else concerning protective and judicial services, and one could at any time unilat-

[8]Murray N. Rothbard, *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1977), p. 2.

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erally discontinue any such cooperation with others and fall back on self-reliant defense, or change one's protective affiliations.

THE CASE FOR PRIVATE SECURITY

Having reconstructed the myth of collective security—the myth of the state—and criticized it on theoretical and empirical grounds, I now must take on the task of constructing the positive case for private security and protection. In order to dispel the myth of collective security, it is not just sufficient to grasp the *error* involved in the idea of a protective state. It is just as important, if not more so, to gain a clear understanding of how the non-statist security alternative would effectively work. Rothbard, building on the pathbreaking analysis of the French–Belgian economist Gustave de Molinari,[9] has given us a sketch of the workings of a free-market system of protection and defense.[10] As well, we owe Morris and Linda Tannehill for their brilliant insights and analyses in this regard.[11] Following their lead, I will proceed deeper in my analysis and provide a more *comprehensive* view of the alternative–non-statist-system of security production and its ability to handle attacks, not just by individuals or gangs but in particular also by *states*.

There exists widespread agreement—among liberal-libertarians such as Molinari, Rothbard, and the Tannehills as well as most other commentators on the matter—that defense is a form of insurance, and defense expenditures represent a sort of insurance premium (price). Accordingly, as Rothbard and the Tannehills in particular would emphasize, within the framework of a complex modern economy based on a worldwide division of labor the most likely candidates for offering protection and defense services are insurance agencies. The better the protection of insured property, the lower are the damage claims and hence an insurer's costs. Thus, to provide efficient protection appears to be in every insurer's own financial interest; and in fact even now, although restricted and hampered by the state, insurance agencies provide wide-ranging services of protection and indemnification (compensation) to injured private parties. Insurance companies

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[9]Gustave de Molinari, *The Production of Security* (New York: Center for Libertarian Studies, 1977).

[10]Murray N. Rothbard, *Power and Market*, chap. 1; Murray N. Rothbard, *For A New Liberty* (New York: Collier, 1978), chaps. 12 and 14.

[11]Morris and Linda Tannehill, *The Market for Liberty* (New York: Laissez Faire Books, 1984), esp. part 2.

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fulfill a second essential requirement. Obviously, anyone offering protection services must appear able to deliver on his promises in order to find clients. That is, he must possess the economic means —the manpower as well as the physical resources—necessary to accomplish the task of dealing with the dangers, actual or imagined, of the real world. On this count insurance agencies appear to be perfect candidates, too. They operate on a nationwide and even international scale, and they own large property holdings dispersed over wide territories and beyond single state boundaries. Accordingly, they have a manifest self-interest in effective protection, and are big and economically powerful. Furthermore, all insurance companies are connected through a network of contractual agreements of mutual assistance and arbitration as well as a system of international reinsurance agencies, representing a combined economic power which dwarfs that of most if not all existing governments.

I want to further analyze and systematically clarify this suggestion: that protection and defense are insurance and can be provided by insurance agencies. To reach this goal, two issues must be addressed. First, it is not possible to insure oneself against every risk of life. I cannot insure myself against committing suicide, for instance, or against burning down my own house, or becoming unemployed, or not feeling like getting out of bed in the morning, or not suffering entrepreneurial losses, because in each case I have full or partial control over the likelihood of the respective outcome. Risks such as these must be assumed individually. No one except myself can possibly deal with them. Hence, the first question will have to be what makes protection and defense an insurable rather than an uninsurable risk? After all, as we have just seen, this is not self-evident. In fact, doesn't everyone have considerable control over the likelihood of an attack on and invasion of his person and property? Do I not deliberately bring about an attack by assaulting or provoking someone else, for instance, and is not protection then an uninsurable risk, like suicide or unemployment, for which each person must assume sole responsibility?

The answer is a qualified yes and no. Yes, insofar as no one can possibly offer *un*conditional protection, i.e., insurance against any invasion whatsoever. That is, unconditional protection can only be provided, if at all, by each individual on his own and for himself. But the answer is no, *insofar* as conditional protection is concerned. Only attacks and invasions that are provoked by the

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victim cannot be insured. However, unprovoked and thus accidental attacks can be insured against.[12] That is, protection becomes an insurable good only if and insofar as an insurance agent contractually restricts the actions of the insured so as to exclude every possible provocation on their part. Various insurance companies may differ with respect to the specific definition of provocation, but there can be no difference between insurers with regard to the principle that each must systematically exclude (prohibit) all provocative and aggressive action among its own clients.

As elementary as this first insight into the essentially defensive—non-aggressive and non-provocative—nature of protection-insurance may seem, it is of fundamental importance. For one, it implies that any known aggressor and provocateur would be unable to find an insurer, and hence, would be economically isolated, weak, and vulnerable. On the other hand, it implies that anyone wanting more protection than that afforded by self-reliant self-defense could do so only if and insofar as he submitted himself to specified norms of non-aggressive, civilized conduct. Furthermore, the greater the number of insured people—and in a modern exchange economy most people want more than just self-defense for their protection—the greater would be the economic pressure on the remaining uninsured to adopt the same or similar standards of non-aggressive social conduct. Moreover, as the result of competition between insurers for voluntarily paying clients, a tendency toward falling prices per insured property values would come about. At the same time, a tendency toward the standardization and unification of property and contract law would be set in motion. Protection contracts with standardized property and product descriptions would come into existence; and out of the steady cooperation between different insurers in mutual arbitration proceedings, a tendency toward the standardization and unification of the rules of procedure, evidence, and conflict resolution (including compensation, restitution, punishment, and retribution), and steadily increasing legal certainty would result. Everyone, by virtue of buying protection insurance, would be tied into a global competitive enterprise of striving to minimize ag-

[12]On the "logic" of insurance, see Ludwig von Mises, *Human Action* (Chicago: Regnery, 1966), chap. 6; Murray N. Rothbard, *Man, Economy, and State* (Auburn, Ala.: Mises Institute, 1993), pp. 498ff.; Hans-Hermann Hoppe, "On Certainty and Uncertainty, Or: How Rational Can Our Expectations Be?" *Review of Austrian Economics* 10, no. 1 (1997); also Richard von Mises, *Probability, Statistics, and Truth* (New York: Dover, 1957); Frank H. Knight, *Risk, Uncertainty, and Profit* (Chicago: University of Chicago Press, 1971).

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gression (and thus maximize defensive protection), and every single conflict and damage claim, regardless of where and by or against whom, would fall into the jurisdiction of exactly one or more enumerable and specific insurance agencies and their mutually defined arbitration procedures.

MORE ON AGGRESSION INSURANCE

Now a second question must be addressed. Even if the status of defensive protection as an insurable good is granted, distinctly different forms of insurance exist. Let us consider just two characteristic examples: insurance against natural disasters, such as earthquakes, floods, and hurricanes and insurance against industrial accidents or disasters, such as malfunctions, explosions, or defective products. The former can serve as an example of group or mutual insurance. Some territories are more prone to natural disasters than others; as a result the demand for and price of insurance will be higher in some areas than others. However, every location *within* certain territorial borders is regarded by the insurer as homogeneous with respect to the risk concerned. The insurer presumably knows the frequency and extent of the event in question for the region as a whole, but he knows nothing about the particular risk of any specific location within the territory. In this case, every insured person will pay the same premium per insured value, and the premiums collected in one time period are presumably sufficient to cover all damage claims during the same time period (otherwise the insurance industry will have losses). Thus, the particular individual risks are pooled and insured mutually.

In contrast, industrial insurance can serve as an example of individual insurance. Unlike natural disasters, the insured risk is the outcome of human action, i.e., of production efforts. Every production process is under the control of an individual producer. No producer *intends* failure or disaster, and as we have seen only accidental—non-intended— disasters are insurable. Yet even if largely controlled and generally successful, every producer and production technology is subject to occasional mishaps and accidents beyond his control—a margin of error. However, as the outcome, even if unintended, of individual production efforts and production techniques, this risk of industrial accidents is essentially different from one producer and production process to another. Accordingly, the risk of different producers and production technologies cannot be pooled, and every producer must be insured individually. In this case, the insurer presumably will have to

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know the frequency of the questionable event over time, but he knows nothing of the likelihood of the event at any specific moment in time, except that at all times the same producer and production technology is in operation. There is no presumption that the premiums collected during any given period will be sufficient to cover all damage claims arising during that period. Rather, the profit-making presumption is that all premiums collected over many time periods will be sufficient in order to cover all claims during the same multi-period time span. Consequently, in this case an insurer must hold capital reserves in order to fulfill its contractual obligation, and in calculating his premiums he must take the present value of these reserves into account.

The second question is, then, what kind of insurance can protect against aggression and invasion by other actors? Can it be provided as group insurance, as for natural disasters, or will it have to be offered in the form of individual insurance, as in the case of industrial accidents?

Let me note at the outset that both forms of insurance represent only the two possible extremes of a continuum, and that the position of any particular risk on this continuum is not definitively fixed. Owing to scientific and technological advances in meteorology, geology, or engineering, for instance, risks that were formerly regarded as homogeneous (allowing for mutual insurance) can become more and more de-homogenized. Noteworthy is this tendency in the field of medical and health insurance. With the advances of genetics and genetic engineering—genetic fingerprinting—medical and health risks previously regarded as homogeneous (unspecific) with respect to large numbers of people have become increasingly more specific and heterogeneous.

With this in mind, can anything specific be said about protection insurance in particular? I would think so. After all, while all insurance requires that the risk be accidental from the standpoint of the insurer and the insured, the accident of an aggressive invasion is distinctly different from that of natural or industrial disasters. Whereas natural disasters and industrial accidents are the outcome of natural forces and the operation of laws of nature, aggression is the outcome of human actions; and whereas nature is blind and does not discriminate between individuals, whether at the same point in time or over time, an aggressor can discriminate and deliberately target specific victims and choose the timing of his attack.

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POLITICAL BORDERS AND INSURANCE

Let me first contrast defense-protection insurance with that against natural disasters. Frequently an analogy between the two is drawn, and it is instructive to examine if or to what extent it holds. The analogy is that just as every individual within certain geographical regions is threatened by the same risk of an earthquake, a flood, or a hurricane, so does every inhabitant within the territory of the U.S. or Germany, for instance, face the same risk of being victimized by a foreign attack. Some superficial similarity—to which I shall come shortly—notwithstanding, it is easy to recognize two fundamental shortcomings in the analogy. For one, the borders of earthquake, flood, or hurricane regions are established and drawn according to objective physical criteria and hence can be referred to as natural. In distinct contrast, political boundaries are artificial boundaries. The borders of the U.S. changed throughout the entire 19th century, and Germany did not exist as such until 1871, but was composed of nearly 50 separate countries. Surely, no one would want to claim that this redrawing of the U.S. or German borders was the outcome of the discovery that the security risk of every American or German within the greater U.S. or Germany was, contrary to the previously held opposite belief, homogeneous (identical).

There is a second obvious shortcoming. Nature—earthquakes, floods, hurricanes— is blind in its destruction. It does not discriminate between more and less valuable locations and objects, but attacks indiscriminately. In distinct contrast, an aggressor-invader can and does discriminate. He does not attack or invade worthless locations and things, like the Sahara Desert, but targets locations and things that are valuable. Other things being equal, the more valuable a location and an object, the more likely it will be the target of an invasion.

This raises the crucial next question. If political borders are arbitrary and attacks are in any case never indiscriminate but directed specifically toward valuable places and things, are there any non-arbitrary borders separating different security-risk (attack) zones? The answer is yes. Such non-arbitrary borders are those of private property. Private property is the result of the appropriation and/or production of particular physical objects or effects by specific individuals at specific locations. Every appropriator–producer (owner) demonstrates with his actions that he regards the appropriated and produced things as valuable (goods), otherwise he would not have appropriated or

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produced them. The borders of everyone's property are objective and intersubjectively ascertainable. They are simply determined by the extension and dimension of the things appropriated and-or produced by any one particular individual. And the borders of all valuable places and things are coextensive with the borders of all property. At any given point in time, every valuable place and thing is owned by someone; only worthless places and things are owned by no one.

Surrounded by other men, every appropriator and producer can also become the object of an attack or invasion. Every property—in contrast to things (matter)—is necessarily valuable; thus, every property owner becomes a possible target of other men's aggressive desires. Consequently, every owner's choice of the location and form of his property will, among countless other considerations, also be influenced by security concerns. Other things being equal, everyone will prefer safer locations and forms of property to locations and forms which are less safe. Yet, regardless of where an owner and his property are located and whatever the property's physical form, every owner, by virtue of not abandoning his property even in view of potential aggression, demonstrates his personal willingness to protect and defend these possessions.

However, if the borders of private property are the only non-arbitrary borders standing in systematic relation to the risk of aggression, then it follows that as many different security zones as there are separately owned property holdings exist, and that these zones are no larger than the extension of these holdings. That is, even more so than in the case of industrial accidents, the insurance of property against aggression would seem to be an example of individual rather than group (mutual) protection.

Whereas the accident-risk of an individual production process is typically independent of its location—such that if the process were replicated by the same producer at different locations his margin of error would remain the same—the risk of aggression against private property—the production plant—is different from one location to another. By its very nature, as privately appropriated and produced goods, property is always separate and distinct. Every property is located at a different place and under the control of a different individual, and each location faces a unique security risk. It can make a difference for my security, for instance, if I reside in the countryside or the city, on a hill or in a valley, or near or far from a river, ocean, harbor, railroad or street. In fact, even contiguous locations do not face

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the same risk. It can make a difference, for instance, if I reside higher or lower on the mountain than my neighbor, upstream or downstream, closer to or more distant from the ocean, or simply north, south, west, or east of him. Moreover, every property, wherever it is located, can be shaped and transformed by its owner so as to increase its safety and reduce the likelihood of an aggression. I may acquire a gun or safe-deposit box, for instance, or I may be able to shoot down an attacking plane from my backyard or own a laser gun that can kill an aggressor thousands of miles away. Thus, no location and no property are like any other. Every owner will have to be insured individually, and to do so every aggression-insurer must hold sufficient capital reserves.

THE DEMOCRATIC STATE AND TOTAL WAR

The analogy typically drawn between insurance against natural disasters and external aggression is fundamentally flawed. As aggression is never indiscriminate but selective and targeted, so is defense. Everyone has different locations and things to defend, and no one's security risk is the same as anyone else's. And yet the analogy also contains a kernel of truth. However, any similarity between natural disasters and external aggression is due *not* to the nature of aggression and defense but to the rather specific nature of *state*-aggression and defense (interstate warfare). As explained above, a state is an agency that exercises a compulsory territorial monopoly of protection and the power to tax, and any such agency will be comparatively more aggressive because it can externalize the costs of such behavior onto its subjects. However, the existence of a state does not just increase the frequency of aggression; it changes its entire character. The existence of states, and especially of democratic states, implies that aggression and defense—war—will tend to be transformed into total, undiscriminating, war.[13]

Consider for a moment a completely stateless world. Most property owners would be individually insured by large, often

[13]On the relationship between state and war, and on the historical transformation from limited (monarchical) to total (democratic) war, see Ekkehard Krippendorff, *Staat and Krieg* (Frankfurt/M.: Suhrkamp, 1985); Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds. (Cambridge: Cambridge University Press, 1985); John F.C. Fuller, *The Conduct of War* (New York: Da Capo Press, 1992); Michael Howard, *War in European History* (New York: Oxford University Press, 1976); Hans-Hermann Hoppe, "Time Preference, Government, and the Process of De-Civilization," in *The Costs of War*, John V. Denson, ed. (New Brunswick, N.J.: Transaction Publishers, 1997); Erik von Kuehnelt-Leddihn, *Leftism Revisited* (Washington, D.C.: Regnery, 1990).

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multinational insurance companies endowed with huge capital reserves. Most if not all aggressors, being bad risks, would be left without any insurance whatever. In this situation, every aggressor or group of aggressors would want to limit their targets, preferably to uninsured property, and avoid all "collateral damage," as they would otherwise find themselves confronted with one or many economically powerful professional defense agencies. Likewise, all defensive violence would be highly selective and targeted. All aggressors would be specific individuals or groups, located at specific places and equipped with specific resources. In response to attacks on their clients, insurance agencies would specifically target these locations and resources for retaliation, and they would want to avoid any collateral damage as they would otherwise become entangled with and liable to other insurers.

All of this fundamentally changes in a statist world with interstate warfare. For one, if a state, the U.S., attacks another, for instance Iraq, this is not just an attack by a limited number of people, equipped with limited resources and located at a clearly identifiable place. Rather, it is an attack by all Americans and with all of their resources. Every American supposedly pays taxes to the U.S. government and is thus *de facto*, whether he wishes to be or not, implicated in every government aggression. Hence, while it is obviously false to claim that every American faces an equal risk of being attacked by Iraq, (low or nonexistent as such a risk is, it is certainly higher in New York City than in Wichita, Kansas, for instance) every American is rendered equal with respect to his own active, if not always voluntary, participation in each of his government's aggressions.

Second, just as the attacker is a state, so is the attacked, Iraq. As its U.S. counterpart, the Iraqi government has the power to tax its population or draft it into its armed forces. As taxpayer or draftee, every Iraqi is implicated in his government's defense just as every American is drawn into the U.S. government's attack. Thus, the war becomes a war of all Americans against all Iraqis, i.e., total war. The strategy of both the attacker and the defender state will be changed accordingly. While the attacker still must be selective regarding the targets of his attack, if for no other reason than that even taxing agencies (states) are ultimately constrained by scarcity, the aggressor has little or no incentive to avoid or minimize collateral damage. To the contrary, since the entire population and national wealth is involved in the defensive effort, collateral damage, whether of lives or property, is even desirable. No clear distinction between combatants and non-combatants exists. Everyone is an enemy, and all

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property provides support for the attacked government. Hence, everyone and everything becomes fair game. Likewise, the defender state will be little concerned about collateral damage resulting from its own retaliation against the attacker. Every citizen of the attacker state and all of their property is a foe and enemy property and thus becomes a possible target of retaliation. Moreover, every state, in accordance with this character of interstate war, will develop and employ more weapons of mass destruction, such as atomic bombs, rather than long-range precision weapons, such as my imaginary laser gun.

Thus, the similarity between war and natural catastrophes —their seemingly indiscriminate destruction and devastation— is exclusively a feature of a statist world.

INSURANCE AND INCENTIVES

This brings on the last problem. We have seen that just as all property is private, all defense must be insured individually by capitalized insurance agencies, very much like industrial accident insurance. Yet, we have also seen that both forms of insurance differ in one fundamental respect. In the case of defense insurance, the location of the insured property matters. The premium per insured value will be different at different locations. Furthermore, aggressors can move around, their arsenal of weapons may change, and their entire character of aggression can alter with the presence of states. Thus, even given an initial property location, the price per insured value can alter with changes in the social environment or surroundings of this location. How would a system of competitive insurance agencies respond to this challenge? In particular, how would it deal with the existence of states and state aggression?

In answering these questions it is essential to recall some elementary economic insights. Other things being equal, private property owners generally, and business owners in particular, prefer locations with low protection costs (insurance premiums) and rising property values to those with high protection costs and falling property values. Consequently, there is a tendency toward the migration of people and goods from high risk and falling property value areas into low risk and increasing property value areas. Furthermore, protection costs and property values are directly related. Other things being equal, higher protection costs (greater attack risks) imply lower or falling property values, and lower protection costs imply higher or increasing property values. These laws and tendencies shape the

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operation of a competitive system of insurance-protection agencies.

First, whereas a tax-funded monopolist will manifest a tendency to raise the cost and price of protection, private profit-loss insurance agencies strive to reduce the cost of protection and thus bring about falling prices. At the same time insurance agencies are more interested than anyone else in rising property values, because this implies not only that their own property holdings appreciate but in particular that there will also be more of other people's property for them to insure. In contrast, if the risk of aggression increases and property values fall, there is less value to be insured while the cost of protection and price of insurance rises, implying poor business conditions for an insurer. Consequently, insurance companies would be under permanent economic pressure to promote the former favorable and avert the latter unfavorable condition.

This incentive structure has a fundamental impact on the operation of insurers. For one, as for the seemingly easier case of the protection against common crime and criminals, a system of competitive insurers would lead to a dramatic change in current crime policy. To recognize the extent of this change, it is instructive to look first at the present and thus familiar statist crime policy. While it is in the interest of state agents to combat common private crime (if only so that there is more property left for them to tax), as tax-funded agents they have little or no interest in being particularly effective at the task of preventing it, or else, if it has occurred, at compensating its victims and apprehending and punishing the offenders. Moreover, under democratic conditions, insult will be added to injury. For if everyone—aggressors as well as non-aggressors and residents of high crime locations as well as those of low crime locations—can vote and be elected to government office, a systematic redistribution of property rights from non-aggressors to aggressors and the residents of low crime areas to those of high crime areas comes into effect and crime will actually be promoted. Accordingly, crime, and consequently the demand for private security services of all kinds are currently at an all-time high. Even more scandalously, instead of compensating the victims of the crimes it did not prevent (as it should have), the government forces victims to pay again as taxpayers for the cost of the apprehension, imprisonment, rehabilitation, and/or entertainment of their aggressors. And rather than requiring higher protection prices in high crime locations and lower ones in low crime locations, as insurers would, the government does the exact opposite. It taxes more in low crime and high

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property value areas than in high crime and low property value ones, or it even subsidizes the residents of the latter locations—the slums—at the expense of those of the former and thus erodes the social conditions unfavorable to crime while promoting those favorable to it.[14]

The operation of competitive insurers would be in striking contrast. For one, if an insurer could not prevent a crime, it would have to indemnify the victim. Thus, above all insurers would want to be effective in crime prevention. And if they still could not prevent it, they would want to be efficient in the detection, apprehension, and punishment of criminal offenders, because in finding and arresting an offender, the insurer could force the criminal—rather than the victim and its insurer—to pay for the damages and cost of indemnification.

More specifically, just as insurance companies currently maintain and continually update a detailed local inventory of property values so they would then maintain and continually update a detailed local inventory of crimes and criminals. Other things being equal, the risk of aggression against any private property location increases with the proximity and the number and resources of potential aggressors. Thus, insurers would be interested in gathering information on actual crimes and known criminals and their locations, and it would be in their mutual interest of minimizing property damage to share this information with each other (just as banks now share information on bad credit risks with each other). Furthermore, insurers would also be particularly interested in gathering information on potential (not yet committed and known) crimes and aggressors, and this would lead to a fundamental overhaul of and improvement in current—statist—crime statistics. In order to predict the future incidence of crime and thus calculate its current price (premium), insurers would correlate the frequency, description, and character of criminals and crimes with the social surroundings in which they occur and operate, and develop and under competitive pressure continually refine an elaborate system of demographic and sociolog-

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[14]On crime and punishment, past and present, see Terry Anderson and P.J. Hill, "The American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West," *Journal of Libertarian Studies* 3, no. 1 (1979); Bruce L. Benson, "Guns for Protection, and Other Private Sector Responses to the Government's Failure to Control Crime," *Journal of Libertarian Studies* 8, no. 1 (1986); Roger D. McGrath, *Gunfighters, Highwaymen, and Vigilantes: Violence on the Frontier* (Berkeley: University of California Press, 1984); James Q. Wilson and Richard J. Herrnstien, *Crime and Human Nature* (New York: Simon and Schuster, 1985); Edward C. Banfield, *The Unheavenly City Revisited* (Boston: Little, Brown, 1974).

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ical crime indicators.[15] That is, every neighborhood would be described, and its risk assessed, in terms and in light of a multitude of crime indicators, such as the composition of sexes, age groups, races, nationalities, ethnicities, religions, languages, professions, and incomes.

Consequently, and in distinct contrast to the present situation, all interlocal, regional, racial, national, ethnic, religious, and linguistic income, and wealth redistribution would disappear, and a constant source of social conflict would be removed permanently. Instead, the emerging price (premium) structure would tend to accurately reflect the risk of each location and its particular social surrounding, such that no one would be forced to pay for the insurance risk of anyone but his own and that associated with his particular neighborhood. More importantly, based on its continually updated and refined system of statistics on crime and property values and further motivated by the noted migration tendency from high-risk-low-value (henceforth "bad") to low-risk-high-value (henceforth "good") locations, a system of competitive aggression insurers would promote a tendency toward civilizational progress (rather than decivilization).

Governments—and democratic governments in particular—erode "good" and promote "bad" neighborhoods through their tax and transfer policy. They do so also, and with possibly an even more damaging effect, through their policy of forced integration. This policy has two aspects. On the one hand, for the owners and residents in "good" locations and neighborhoods who are faced with an immigration problem, forced integration means that they must accept, without discrimination, every domestic immigrant, as transient or tourist on public roads, as customer, client, resident, or neighbor. They are prohibited by their government from excluding anyone, including anyone they consider an undesirable potential risk, from immigration. On the other hand, for those owners and residents in "bad" locations and neighborhoods, who experience emigration rather than immigration, forced integration means that they are prevented from effective self-protection. Rather than being allowed to rid themselves of crime through the expulsion of known criminals from their neigh-

[15]For an overview of the extent to which official—statist—statistics, in particular on crime, deliberately ignore, misrepresent, or distort the known facts for reason of so-called public policy (political correctness), see J. Philippe Rushton, *Race, Evolution, and Behavior* (New Brunswick, N.J.: Transaction Publishers, 1995); Michael Levin, *Why Race Matters* (Westport, Conn.: Praeger, 1997).

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borhood, they are forced by their government to live in permanent association with their aggressors.[16]

The results of a system of private protection insurers would be in striking contrast to these all too familiar de-civilizing effects and tendencies of statist crime protection. To be sure, insurers would be unable to eliminate the differences between "good" and "bad" neighborhoods. In fact, these differences might even become more pronounced. However, driven by their interest in rising property values and falling protection costs, insurers would promote a tendency to improve by uplifting and cultivating both "good" and "bad" neighborhoods. Thus, in "good" neighborhoods insurers would adopt a policy of selective immigration. Unlike states, they could not and would not want to disregard the discriminating inclinations among the insured toward immigrants. To the contrary, even more so than any one of their clients, insurers would be interested in discrimination: in admitting only those immigrants whose presence adds to a lower crime risk and increased property values and in excluding those whose presence leads to a higher risk and lower property values. That is, rather than eliminating discrimination, insurers would rationalize and perfect its practice. Based on their statistics on crime and property values, and in order to reduce the cost of protection and raise property values, insurers would formulate and continually refine various restrictive (exclusionary) rules and procedures relating to immigration and immigrants and thus give quantitative precision —in the form of prices and price differentials—to the value of discrimination (and the cost of non-discrimination) between potential immigrants (as high or low risk and value-productive).

Similarly, in "bad" neighborhoods the interests of the insurers and the insured would coincide. Insurers would not want to suppress the expulsionist inclinations among the insured toward known criminals. They would rationalize such tendencies by offering selective price cuts (contingent on specific clean-up operations). Indeed, in cooperation with one another, insurers would want to expel known criminals not just from their immediate neighborhood, but from civilization altogether, into the wilderness or open frontier of the Amazon jungle, the Sahara, or the polar regions.

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[16]See Hans-Hermann Hoppe, "Free Immigration or Forced Integration," *Chronicles* (July 1995).

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INSURING AGAINST STATE AGGRESSION

Yet what about defense against a state? How would insurers protect us from state aggression?

First, it is essential to remember that governments *qua* compulsory, tax-funded monopolies are inherently wasteful and inefficient in whatever they do. This is also true for weapons technology and production, military intelligence and strategy, especially in our age of high technology. Accordingly, states would not be able to compete within the same territory against voluntarily financed insurance agencies. Moreover, most important and general among the restrictive rules relating to immigration and designed by insurers to lower protection cost and increase property values would be the one concerning government agents. States are inherently aggressive and pose a permanent danger to every insurer and insured. Thus, insurers in particular would want to exclude or severely restrict—as a potential security risk—the immigration (territorial entry) of all known government agents, and they would induce the insured, either as a condition of insurance or of a lower premium, to exclude or strictly limit any direct contact with any known government agent, be it as visitor, customer, client, resident, or neighbor. That is, wherever insurance companies operated—in all free territories—state agents would be treated as undesirable outcasts, potentially more dangerous than any common criminal. Accordingly, states and their personnel would be able to operate and reside only in territorial separation from, and on the fringes of, free territories. Furthermore, owing to the comparatively lower economic productivity of statist territories, governments would be continually weakened by the emigration of their most value-productive residents.

Now, what if such a government should decide to attack or invade a free territory? This would be easier said than done! Who and what would one attack? There would be no state opponent. Only private property owners and their private insurance agencies would exist. No one, least of all the insurers, would have presumably engaged in aggression or even provocation. If there were any aggression or provocation against the state at all, this would be the action of a particular person, and in this case the interest of the state and insurance agencies would fully coincide. Both would want to see the attacker punished and held accountable for all damages caused. But without any aggressor-enemy, how could the state justify an attack and even more so any indiscriminate attack? And surely it would have to justify it! For the power of every government, even the most despotic one, rests

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ultimately on opinion and consent, as La Boetie, Hume, Mises and Rothbard have explained.[17] Kings and presidents can issue an order to attack, of course. But there must be scores of other willing to execute their order to put it into effect. There must be generals receiving and following the order, soldiers willing to march, kill, and be killed, and domestic producers willing to continue producing to fund the war. If this consensual willingness were absent because the orders of the state rulers were considered illegitimate, even the seemingly most powerful government would be rendered ineffectual and collapse, as the recent examples of the Shah of Iran and the Soviet Union have illustrated. Hence, from the viewpoint of the leaders of the state an attack on free territories would have to be considered extremely risky. No propaganda effort, however elaborate, would make the public believe that its attack were anything but an aggression against innocent victims. In this situation, the rulers of the state would be happy to maintain monopolistic control over their present territory rather than running the risk of losing legitimacy and all of their power in an attempt at territorial expansion.

However, as unlikely as this may be, what would happen if a state still attacked and/or invaded a neighboring free territory? In this case the aggressor would not encounter an unarmed population. Only in statist territories is the civilian population characteristically unarmed. States everywhere aim to disarm their own citizenry so as to be better able to tax and expropriate it. In contrast, insurers in free territories would not want to disarm the insured. Nor could they. For who would want to be protected by someone who required him as a first step to give up his ultimate means of self-defense? To the contrary, insurance agencies would encourage the ownership of weapons among their insured by means of selective price cuts.

Moreover, apart from the opposition of an armed private citizenry, the aggressor state would run into the resistance of not only one but in all likelihood several insurance and reinsurance agencies. In the case of a successful attack and invasion, these insurers would be faced with massive indemnification payments. Unlike the aggressing state, however, these insurers would be

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[17]Etienne de la Boetie, *The Politics of Obedience: The Discourse of Voluntary Servitude* (New York: Free Life Editions, 1975); David Hume, "The First Principles of Government," in David Hume, *Essays: Moral, Political, and Literary* (Oxford: Oxford University Press, 1971); Ludwig von Mises, *Liberalism: In the Classical Tradition* (San Francisco: Cobden Press, 1985); Murray N. Rothbard, *Egalitarianism As A Revolt Against Nature and Other Essays* (Washington, D.C.: Libertarian Review Press, 1974.).

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efficient and competitive firms. Other things being equal, the risk of an attack—and hence the price of defense insurance—would be higher in locations adjacent or in close proximity to state territories than in places far away from any state. To justify this higher price, insurers would have to demonstrate defensive readiness *vis-à-vis* any possible state aggression to their clients, in the form of intelligence services, the ownership of suitable weapons and materials, and military personnel and training. In other words, the insurers would be prepared—effectively equipped and trained—for the contingency of a state attack and ready to respond with a two-fold defense strategy. On the one hand, insofar as their operations in free territories are concerned insurers would be ready to expel, capture, or kill every invader while at the same time trying to avoid or minimize all collateral damage. On the other hand, insofar as their operations on state territory are concerned insurers would be prepared to target the aggressor—the state—for retaliation. That is, insurers would be ready to counterattack and kill, whether with long-range precision weapons or assassination commandos, state agents from the top of the government hierarchy of king, president, or prime minister on downward while at the same time seeking to avoid or minimize all collateral damage to the property of innocent civilians (non-state agents), and they would thereby encourage internal resistance against the aggressor government, promote its delegitimization, and possibly incite the liberation and transformation of the state territory into a free country.

REGAINING OUR RIGHT TO SELF-DEFENSE

I have thus come full circle with my argument. First, I have shown that the idea of a protective state and state protection of private property is based on a fundamental theoretical error, and that this error has had disastrous consequences: the destruction and insecurity of all private property and perpetual war. Second, I have shown that the correct answer to the question of who is to defend private property owners from aggression is the same as for the production of every other good or service: private property owners, cooperation based on the division of labor, and market competition. Third, I have explained how a system of private profit-loss insurers would effectively minimize aggression, whether by private criminals or states, and promote a tendency toward civilization and perpetual peace. The only task outstanding, then, is to implement these insights: to withdraw one's consent and willing cooperation from the state and to promote its

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delegitimization in public opinion so as to persuade others to do the same. Without the erroneous public perception and judgment of the state as just and necessary and without the public's voluntary cooperation, even the seemingly most powerful government would implode and its powers evaporate. Thus liberated, we would regain our right to self-defense and be able to turn to freed and unregulated insurance agencies for efficient professional assistance in all matters of protection and conflict resolution.

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MARKET CHOSEN LAW

Edward Stringham*

Central planning and state control are often cast aside as inferior replacements to far more efficient and humane voluntary market transactions. Still there is one area that most believe must be run collectively through the state. The realm of law is often the foundation of government, and the suggestion that central control be abandoned shocks most people as something impossible. Philosophers, from Hobbes to Rand, believe that for all encounters there must exist one authority to create and enforce laws. They are baffled by what would happen if two parties had a conflict without an overarching judicial system. They assume that only the public sector can prevent and resolve disputes, but they have failed to notice the many private arrangements already in existence to deal with such dilemmas.

There are numerous non-government institutions that protect individuals on both local and global levels. Examining these arrangements can give insight on how private law can function, thereby eliminating any need to speculate on how future firms might operate. The market allows consumers to choose different types and degrees of services and this could be true in the realm of law. Choice does not mean chaos and does not mean that people will be forced to deal with laws that they have not chosen. Most legal problems probably can be attributed to public law enforcement, so we do not need to assume that private law would be perplexed with the same dilemmas. A private legal system could allow individuals to agree ahead of time to follow certain rules. Judges would not need to compare individuals' utilities; they would solely make judgments in accordance with consumers' agreed-upon wants.

Government police and courts are inefficient and inhumane. There is no reason that consumers be forced to deal with a central monopoly when there are other alternatives. The legal realm is no different from any other industry; the market will allow consumers to buy services provided by entrepreneurs that are far superior than anything statists can imagine. Private law al-

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ready provides many solutions but is ultimately restricted by the leviathan state. If the state stopped intervening, the consumer would finally be sovereign and the market would finally be able to flourish.

HOW WOULD THE MARKET LOOK?

If government law enforcement is to be rejected, then its alternatives must be examined. Even though we are not fortunate enough to be able to observe a fully functional modern-day private system we must realize that there are many ways of administering law other than those practices of the massive state apparatus. During the height of communism in the Soviet empire, there was no reason to assume that central planning was the only possibility. The idea of non-government law may strike many as outrageous, but others have not failed to notice that there already exists a considerable degree of private law. While they do not have the exact appearance as the governmental police and courts, many private institutions provide protective services.

When discussing whether or not government law enforcement should be abandoned, we need not look into a crystal ball to view how private judicial systems will operate. We already have existing examples that provide answers today. John Hasnas wrote, "So, what would a free market in legal services be like? As Sherlock Holmes would regularly say to the good doctor, 'You see, Watson, but you do not observe.' Examples of non-state law are all around us."[1] Hasnas pointed out many examples of market arrangements to provide order, which are quite common. They operate on both local and global levels and while presently the state prevents a completely private system from operating, the presence of market arrangements shows that private police and courts are possible.

The market for legal services is not different intrinsically from any other. Businesses will continually create better and more efficient products, which without competition would have seemed inconceivable.[2] Currently there are severe limits on incen-

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[1] John Hasnas, "The Myth of the Rule of Law," *Wisconsin Law Review* (1995): 227.

[2] Consider the case of radio and television. At one time, statists claimed that private broadcasts would be impossible. Despite this, private radio and television have proven themselves to be successes. Companies have discovered revenue solutions which would have been inconceivable at the outset. To solve its supposed non-excludability nature, companies found ways to finance the broadcast using advertisements, and those companies not interested in broadcasting advertisements found ways to scramble broadcasts, enabling exclusion of non-payers. It

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tives for private investment in this area, but this does not mean that the realm is inherently closed. If government ceased imposing its law on everyone, most likely the nature of law enforcement would be vastly different from today's nature. How exactly would a system of competing law agencies function? Hasnas addressed the question as he wrote,

> I am always tempted to give the honest and accurate response to this challenge, which is that to ask the question is to miss the point. If human beings had the wisdom and knowledge-generating capacity to be able to describe how a free market would work, that would be the strongest argument for central planning.[3]

He pointed out that markets allow a multitude of suppliers to attempt to solve dilemmas, which no one person or monopoly could ever be able to. Trying to predict the exact structure of the market is an impossible task to undertake, and it is foolish to think that one person can anticipate all solutions offered by entrepreneurs and businesses.

CONTEMPORARY SOLUTIONS OFFERED ON A LOCAL LEVEL

How would it ever be possible for people to live peacefully without being controlled by the government? This question has been the subject of many discourses. Of why there must be a state authority, John Locke wrote:

> First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of nature be plain and intelligible to all rational creatures; yet men, being biased by their own interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.
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> Secondly, In the state of Nature there wants a known and indifferent judge, with authority to determine all differences according to established law. For everyone in that state, being both judge and executioner of the law

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is unlikely that bureaucrats would have discovered these solutions, but profit-motivated businesses did. At the time television was invented, no one could have anticipated that market, but this is no grounds for banning private operation. There are strong parallels to law enforcement.

[3] Hasnas, "The Myth of the Rule of Law," p. 226.

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> of nature, men being partial to themselves, passion and revenge is very apt to carry them too far.[4]

Locke believed that in the absence of government, since people are biased in their own favor, they are unfit judges over themselves. Accordingly, the state must act as the arbiter; otherwise violence would ensue. While he may be correct that often times third party judges are needed, there is no reason to assume that only state officials can perform this role.

There are many cases of private law enforcement, one of the most common can be seen at institutions of higher learning. Although private security officers and dean's offices differ greatly from their bureaucratic counterparts, they nevertheless perform the job supposedly only government police and courts are capable. Many other entities also produce a safe atmosphere in a similar manner: shopping malls, amusement parks, resorts, and private housing developments are cases in point. Just because they are not as ostentatious as the state does not mean that they are not providing protection. These institutions show that not only is the notion of private security possible, but that it is widespread.

A college is a self contained community that offers a whole array of services including security. While education is its main service, to attract students it needs to provide a pleasant and safe environment. The Vice President of Business Affairs & Treasurer at the College of the Holy Cross, writes, "We employ a small police force, handle a variety of legal matters and operate small judicial and governance bodies— a small claims court and a town government rolled into one."[5] Along with education, the college provides other services, many of them so-called public goods. Colleges do not charge students separate fees for security, but it is included in the price of tuition. The school operates to keep students safe from each other and from outsiders, fostering a safe atmosphere where students can live peacefully, with little facilitation of government police.

Private universities are interested in providing as good a service as possible; they engage in profit-maximizing behavior.[6] It is in their best interest to provide as pleasant an atmosphere as possible, at the same time minimizing costs. The goal is not mere-

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[4] John Locke, "The Second Treatise of Civil Government," in *The Portable Enlightenment Reader*, Isaac Kramnick, ed. (New York: Penguin Books, 1995), p. 403.

[5] William R. Durgin, "Holy Cross as a Business," *Holy Cross Crossroads* 31, no.5, p. 32.

[6] This analysis does not apply to public universities that cannot go bankrupt if they do a poor job.

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ly to get tough on crime, but rather to cultivate a pleasant atmosphere to satisfy the customers and to attract even more. The system must not be too harsh, nor too lackadaisical, because in both cases it would deter students. If a school were too strict for students' tastes, applications and attendance would decline, and at the opposite extreme, if a school were too chaotic and dangerous, demand would also decline.

Private universities have also created entire "private judicial systems." Although it might seem elementary to even examine them, it is important to do so, because most people do not appreciate the parallels between universities' services and those of the government. It is fairly typical at a college for students to live in dormitories, along with Resident Advisor student employees who deal with minor problems and student concerns. These Resident Advisors operate under the supervision of non-student Complex Directors, who live in the dormitories to oversee the buildings and deal with larger problems. Problems beyond the scope of the Complex Directors are attended to by many Assistant and Associate Deans. For even larger or more difficult issues, the Dean of Students acts as the ultimate judge.

While these college employees do not have portraits painted of themselves displayed on the walls and do not wear long robes, they all perform essentially the service that government officials claim to do. While the latter system is highly complicated and bureaucratic, involving local, state, and federal judges as well as appellate and supreme courts, the university system can still be compared to it. For example, when a case is not solved by the Resident Advisor, Complex Director, Assistant, nor Associate Dean "Courts," the case is sent to the Dean of Students—the "Supreme Court." On campus, he renders the ultimate decision binding on all students, who have explicitly agreed beforehand to be adhere to this procedure when they chose to attend this college.

The entire process of resolving dilemmas at the university is done in a timely and efficient manner, because universities are competing for students. A university does not want to make the process too protracted or unpleasant, because it would ultimately lead to a lowering of quality of the total service provided by the school. Despite the alleged impossibility of a functional private judicial system, it is apparent that at the local level of a university campus, such private systems do exist. Thus, such communities internalize production of security and hardly rely on local public police at all.

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CONTEMPORARY SOLUTIONS OFFERED ON A GLOBAL LEVEL

While advocates of the state might grant that private services are possible on a local level, they still believe that on a larger scale all communities must operate under the jurisdiction of a single government. They cannot fathom anything but conflict if all parties were not forced to be under the jurisdiction of one overarching state. As seventeenth-century philosopher Thomas Hobbes wrote:

> Therefore, before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire, in recompense of the universal right they abandon; and such power there is none before the erection of the commonwealth.[7]

He believed that without a Leviathan that held authority over *all* people, there would be no possible way for them to interact with one another. The belief is that chaos would ensue if all individuals were not under control of a single authority.

What would happen if people were not all under the authority of a monopolist law enforcer? The most typical objection is that two parties, not under jurisdiction of the same government, would unavoidably come to an impasse. As Ayn Rand wrote:

> Suppose Mr. Smith, a customer of Government A, suspects his next-door neighbor, Mr. Jones, a customer of Government B, has robbed him; a squad of Police A proceeds to Mr. Jones's house and is met at the door by a squad of Police B, who declare that they do not accept the validity of Mr. Smith's complaint and do not recognize the authority of Government A. What happens then? You take it from there.[8]

Although this would not pose a problem within a university campus between contractually bound students, there are many cases that parties who do not live in the same vicinity come in contact with one another. What would happen if a student of

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[7] Thomas Hobbes, *Leviathan: With Selected Variants From The Latin Edition of 1668*, Edwin Curly, ed. (Indianapolis, Ind.: Hackett Publishing, 1994), p. 89.

[8] Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1967), p. 335.

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University A has a dispute with a student of University B? How exactly would those problems between these parties be solved? While it is tempting to try to try to solve these hypothetical dilemmas,[9] perhaps instead these questions should be reformulated in a different but equivalent manner, which will give insight to how these questions can be solved.

For example, what happens when a baseball team from the United States plays one in Canada? What rules would they follow and would both teams play by different rules? What would happen if there were a dispute about the rules? If the Canadian players are not under jurisdiction of the United States government and the United States players do not recognize the authority of any government but their own, who would solve the disputes? Since parties are biased in their own suits, would not the players be unable to reach a common agreement? Would these two parties be able to find a solution to their dilemmas, or would absolute chaos ensue?

Although it might seem absurd to even raise let alone answer these questions, it should be evident that they are equivalent to the arguments in favor of a monopolist law enforcer. Baseball teams, even if they are from different political jurisdictions, decide ahead of time to play by the same rules. While not all players are citizens of the same government, they allow the same baseball league officials to umpire games. The rules of the game are agreed upon by all participants, and in the case of disputes, the league officials, who have been privately contracted, resolve the issue. If, for some reason, specific league officials are not performing their tasks well, they can be replaced by the league. If the league as a whole is not performing its tasks well, players and fans are free to discontinue their business with the league and patronize another.

It should be noted that there is no compulsion in present baseball institutional arrangements. All parties have made their transactions on the market voluntarily. The league, the umpires, and the players, are all operating under the constraints of the market. If any one of them perform poorly, they will earn less revenue in the future. The league officials act in an unbiased manner, because that is what they are paid to do. If there were

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[9] To read speculative hypotheses about ways future private companies could solve these disputes, see Murray Rothbard, *Power and Market: Government and the Economy*, 2nd ed. (Kansas City: Sheed Andrews and McMeel, 1977), pp. 6-7; also David Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism*, 2nd ed. (La Salle, Ill.: Open Court, 1989), chap. 29.

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any chicanery, individual employees and the entire league would lose out. There obviously is no problem with settlement of disputes in the realm of athletics, so it is questionable why one would assume that there would be difficulties were this applied elsewhere.

Some might argue that baseball is a low-stakes matter, and that a sports contest is a completely different matter than one with potential infractions against person or property. When there are property rights at stake, sports rules would not be applicable. Even if this were true, it would still imply that there must be a monopolist enforcer.

Once again, it is helpful to reformulate the original criticisms against a market for law enforcement, this time for international business. Take the case, for example, when a producer in the United States sells goods to a purchaser in a country such as Singapore. What happens if there is a dispute?[10] Would they both adhere to different trade customs? Who makes and enforces the rules? If the company from Singapore is not within the jurisdiction of the United States government and the company from the United States is not under the jurisdiction of the government of Singapore, who would solve the disputes? Since parties are biased in their own suits, wouldn't they both deny allegations and be unable to reach a settlement? In the case of global trade, where there is no monopolist enforcer, would there be chaos?

These questions may seem absurd, but they are all analogous to the original criticisms against polycentric law enforcement. There is no single world government that has jurisdiction over all traders, yet somehow—astonishingly—companies are able to do business. Even though anarchy exists between nations, firms are able to engage in commerce peacefully. Since there is no coercively imposed and enforced legal system, obviously something else must provide order; else, no one would deal internationally. Many bodies of privately created law have been adopted voluntarily in order to facilitate business.

While there are potentially many different answers to these dilemmas, none of them involve a monopolist government. The common practice is for firms to contract ahead of time, agreeing to follow certain rules and to be bound by a specific arbitrator in the case of dispute. The laws of the sea were developed completely outside the jurisdiction of any government. Benson stated, "Law

[10] *Suppose that the purchaser does not pay the producer, or that the producers ships faulty products but denies the allegation.*

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Merchant effectively shatters the myth that government must define and enforce 'the rules of the game.'"[11] It was not governments, but rather businesses acting in their own self interest who developed customary laws.

By agreeing to follow arbitration companies, businesses can eliminate the need to utilize government courts. These private courts exist both at international and national levels. The American Arbitration Association describes itself as itself as "dedicated to the resolution of disputes through the use of mediation, arbitration, negotiation, elections and other voluntary dispute resolution methodologies." Parties use alternative dispute resolution for a more efficient way of resolving problems. Instead of using the bureaucratic methods, these companies can use faster and simpler procedures.

How does a system of enforcing rules work if there is no army threatening force as does the state? While most people assume that violence is the only possible way to enforce laws, this is far from the practice used in business. Firms can choose to do business only with other companies who are members of certain commerce organizations, which indicate that they are reputable and will follow appropriate business procedures. For companies that have not established connections with commerce associations, there is yet another option. Before trades take place, both companies can deposit sums of money with a specific arbitrator who has the discretion to bestow the money to a party if the arbitrator finds the other party at fault. There is no world government, and yet firms find ways to resolve disputes. Such arrangements do work, and there is no unsolvable problem due to the lack of an overarching state.

INTEGRATION OF LOCAL AND NON-LOCAL SERVICES

It has been shown that local privately produced order is common, as is true for the global variety. Government police on both a local and international level are not necessarily needed. Could a completely private system work on a universal scale? One concern is that while it is possible for community residents to contract with one another, it is unfeasible for everyone to enter into restrictive covenants with all others on earth. When individuals do not have the resources and the wherewithal to investigate business partners as large corporations do, there would need to be some type of solution that could work for them on a large scale.

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[11] Bruce Benson, *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Research Institute for Public Policy, 1990), p. 30.

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Happily, once again, we do not have to speculate about how this could be accomplished. The institution of private credit cards shows that markets can offer a wide degree of differing services, linking people from all over the world in a commercial network. There is no state monopoly in the credit card market and—shockingly—it works quite well.

When a customer wishes to make a purchase with a credit card, what would happen if the store owner was affiliated with a local bank, and the customer with a bank located across the continent? Would Mr. Smith's bank not recognize the validity of Mr. Jones's bank, and would there be absolute chaos? To alleviate these dilemmas, could private banks find solutions or would there need to be a state monopoly? Merely to pose matters in this format is to reveal the ludicrousness of the question. The answer is clear: there is no coercive monopoly needed. Markets already enable many individuals and their respective banks to interact. It is common for customers to subscribe to local services, yet these banks make arrangements with non-local systems that enable customers to use their charge cards almost universally.

To return to private universities, let us look at credit cards often offered through college alumni associations. Even though the credit card is specifically designed for the college, this does not mean it is only compatible with others who have the same card. This card is designed to be able to work all across the globe. It might be difficult for each college to fully integrate a credit card into a global credit network, but a college association need not handle all of the specific credit issues itself. Associations that wish to offer credit cards can offer them through large banks (such as Citibank or MBNA), with the banks handling the details of the transactions. The university organization is able to choose the bank with which their card will be contracted.

Even though banks provide credit cards for smaller organizations, this does not solve the compatibility problem, because there could still be a dilemma if Mr. Smith uses Citibank and Mr. Jones uses MBNA. Does this situation call for a socialist monopoly, or is there a way for these companies to sort things out? Although each bank operates independently, it can choose to operate under the larger umbrellas of a Mastercard or Visa. These organizations compete with one another, as well as with others such as American Express, Discover, Diner's Club, and many others to offer wide acceptability and reliable service.

No firm or individual is forced to pay taxes for a state monopoly in this realm, and these companies have discovered a way

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to make their cards acceptable in all civilized countries. If a customer wants to reap the benefits of Mastercard, he can choose to do so, but he is not forced to do so. Customers can pick Mastercard, a competitor, or they can eschew credit cards entirely. The individual who does not use credit cards does not hurt others; he simply cannot conduct business with certain firms. The market allows people to voluntarily conform to standards, but it does not compel anyone to do so.

Although it would be difficult for all businesses to investigate each individual customer's credit history, the credit card market solves this seemingly overwhelming task with ease. A business does not need to know a thing about a customer's financial situation or history, except for the single fact that the customer uses a reputable credit card.[12] The retailer relies on the credit card companies to deal with the customer's credit, and is guaranteed payment by the credit lender. A business can simply state that it accepts Mastercard and Visa only, and if a customer cannot supply a qualifying type of payment, then no transaction will take place. It is that simple.

How does the consumer transactions market relate to privately produced safety? It is similar because it is one possible way for businesses to make sure that their clientele meets certain qualifications. On university campuses, one often needs to present identification to security or insert identification card into electronic card readers to be able to access certain areas. For example, any college-age appearing student might be allowed on a campus, but only those who live in a certain dormitory have electronic access to enter that particular building. Similarly, each floor could have its own separate access system.[13] An institution can make these cautionary measures as strict or as lackadaisical as it sees fit.

It is beyond our knowledge of how entrepreneurs could create superior systems of security, but it is not difficult to envision the simple expansion of university-style security practices, coupled with credit card practices. Just as colleges may allow only resi-

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[12] Bryan Caplan described a situation when consumers use credit cards as collateral. He wrote, "Consider video rentals—before we can get a rental card, we must authorize the renter to use our credit card if we do not return the video or pay our fees. Our credit card company in effect guarantees our trustworthiness; and if we break our agreement, it pays the video rental firm." Bryan Caplan, "The Economics of Non-State Legal Systems," (working paper, Princeton University, (1993).

[13] Another similar example, although not as complex as the electronic card readers in place on college campuses, is when patrons enter a bar and are required to present identification that they are of a certain age.

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dent students into the dormitories and just as businesses may choose to commercially interact only with customers who satisfy certain criteria, one could imagine people choosing to interact only with others who meet specific qualifications. Student interaction falls under the jurisdiction of the Dean of Students, debates between the Boston Red Sox and the Toronto Blue Jays are handled by the Baseball Commissioner, and business transactions with credit cards holders are administered by Mastercard or Visa. Critiques of private law have already been anticipated by higher education, baseball, and the banking industries.

It seems to be a common instinct to attempt to criticize any alternatives to government control of law, but the fact of the matter is that there already exist many solutions not involving government. The classical Randian criticism, involving the hypothetical Mr. Smith and Mr. Jones not under the jurisdiction of a monopolist governments, is really not that difficult to refute. Locally, as well as the internationally, private industries are already able to solve these dilemmas. The classic criticism is somewhat senseless, because no one on earth is now under the jurisdiction of a single world government. Unless we are to implement such an institution, we are being logically inconsistent. There are billions of cases where individuals encounter others not under the jurisdiction of the same government, and somehow there is not this chaos that statists envision. Markets can and will be able to provide security solutions without any need for government.

DIFFERENT SERVICES FOR DIFFERENT PREFERENCES

Just as consumers choose different types of credit cards, it could be possible for consumers to choose different legal arrangements. We have grown accustomed to certain structures and arrangements, but new ways of establishing and maintaining order might be discovered. Just as not all consumers choose identical services in other industries, nor would they be forced to do so in this case. Different tastes could be satisfied with specialized services. The amount of protection could be chosen, as could the very nature of the protection. It is possible that people would choose very different legal systems from one another. It is common nature to attempt to create a blueprint of how a society would look by asking the questions: What would be the nature of the laws? How strict would they be? What would the punishments be like? Would there restitution, prisons, or death penal-

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ties? What standards of proof would the legal systems?[14] While all of these questions are grappling ones to answer if one is trying to centrally plan a monopoly, under a system with competing agencies and competing systems, these questions can be answered easily. Certain law enforcement procedures will be adopted, depending on consumer wants.

For internal disputes between contractually bound individuals, some could decide with one another to follow strict rules and others looser guidelines. It could be possible for one covenant to provide that certain crimes will warrant capital punishment. For example, a condominium association could state that any members of the private community who trespassed onto another member's property would receive the death penalty. When discussing whether or not it is humane for the government to administer such punishment, the opposing views are probably as irreconcilable as can be, but when the matter concerns parties who want to create and follow such a rule, the issue is not as problematic. Is it immoral or inefficient for individuals to voluntarily decide to abide by strict rules? This would be an issue decided only by those who would be voluntarily bound by these rules.

Another commune might state ahead of time to all joining members that there would be no private rights in that commune. The moral question concerning what degree internal aggressors would (or would not) be punished would be decided by the members of the covenant. Would it be immoral for individuals to voluntarily decide to live with few or no rules within a community? This would also be an issue for the members to decide.

Property owners could contract a legal system to define exactly what constituted an aggression within that property.[15]

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[14] Instead of solely relying on witnesses' accounts as evidence, some property owners might want to set up complex surveillance systems that electronically monitor the whereabouts of all individuals on the property. This is the case at buildings that require key cards for access, enabling management to see which people open which doors and when they do so. Now it is true that some people might not prefer to patronize such an environment, but these people would not have to do so. There are many people who choose not to work at companies with security access cards, but there are others who do. Some people might desire their everyday lives recorded so there can be no doubt whether or not they are innocent of a crime. There might be a lot of incentive to choose to have one's activities recorded. Surely, businesses motivated by profits would have a lot of incentive to find solutions.

[15] For a similar discussion, see Friedman *The Machinery of Freedom*, pp. 117–18. The difference between his analysis and the one contained here is that he is addressing inter-group disputes while this only addresses intra-group disputes. On pp. 196–97, Friedman brings up questions of whether flashlight rays and laser beam rays should be considered invasions of property, but he spoke about people who were not contractually bound to the same rules. It could be possible for private covenants to in-

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Theoretically, the answer could easily be decided by each property owner. It is very difficult to define the limits of legal behavior for all people, but as Hasnas theorized, "In a free market, the law would not come in a one-size fits all."[16] People have different tastes from one another and different social norms. While certain behavior, such as murder, is almost always defined as a violation of conduct, with other behavior it is not so clear cut.

When does the aggression of an altercation begin, during the first exchange of words, during the first physical movement, or during the first moment of contact between the parties? It may seem difficult to answer that question, but with a system of market-chosen rules, the customers would be in a position to make that determination. The classic statement of parents, "While you are under my roof, you follow my rules," could be applied by each respective property owner. For example, one eating-and-drinking establishment could state to arriving customers that acting impolite would be not be tolerated, and that the management would take action against anyone who used inappropriate language. In contrast, another such establishment could state that fighting was allowed inside the bar, and thus all altercations would have been voluntarily agreed to upon entrance of that bar. These different establishments could have completely different ways of dealing disputes.

While norms differ greatly between different groups of people, the government court system assigns a set of uniform guidelines for everyone to obey. This would not have to be the case with competing legal systems. People who have all agreed to abide by certain rules could handle disputes among themselves very differently from other groups. Hasnas writes:

> Given the current thinking about racial and sexual identity, it seems that many disputes among members of the same minority group or among women would be brought to "niche" dispute resolution companies composed predominantly of members of the relevant group, who would use their specialized knowledge of group "culture" to devise superior rules and procedures for intra-group dispute resolution.[17]

In their midst, people who have agreed with each other could follow any rules type they desire. These practices would not

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ternalize most of those externalities to eliminate confusions. Certain private condominium associations could allow members to have bright lamps, while others could prohibit lamps altogether.

[16] Hasnas, "The Myth of the Rule of Law," p.228.

[17] Hasnas, "The Myth of the Rule of Law," p.229.

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apply to all people, but only those who have chosen to interact in such a way.

As another example, the issue of what constitutes a violation of rights is especially controversial when it comes to defining sexual harassment. Once again this issue could be decided by the property owners of each establishment. It seems that there could be different guidelines for what constitutes acceptable behavior in a nunnery versus a singles bar. If disputes arose, instead of relying on the uniform laws set forth by the legislators, each group could deal with the problems differently. It seems likely that, if private establishments informed parties of the rules ahead of time, considerably fewer disputes would arise. The issue of harassment in the workplace is a perfect example where employers and employees are having a difficult time operating together with the laws set forth by the United States government. To avoid any such confusion to begin with, certain companies could state that relatively high degrees of sexual harassment would be allowed, while other companies could state that any non-work related comments would be intolerable. This way, the employees could decide which atmosphere was most desirable, and the market would lead to an efficient solution where all parties were satisfied.[18]

Certain people, who wanted more employee protection or more consumer protection, could work for companies or shop at stores that had a high degree of protection or even paternalism if desired. They would be in essence contracting legal systems that were more protective. Anyone wishing to do business in such a manner would be required by the business owners to adhere to their restrictions but no one would be forced to. Such a system would be a way for people to voluntarily choose personal regulations through the market. These regulations, unlike the bureaucratic regulations, would necessarily pass the market litmus test, with burdensome self regulations leading to a decrease in business among the concerned parties. Businesses could compete to provide the best internal atmosphere for its members, creating an atmosphere where people would tend to be satisfied. By being able to frequent businesses that had different sets of internal of rules, consumers would in essence be able to have a variety of legal choice.

[18] The only problem with this would be that the neo-puritans would not be able to impose their religious beliefs, through the use of law, onto all people.

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VARIETY OF LEGAL CHOICE DOES NOT MEAN CHAOS

It seems possible that there could exist many different types of legal systems, but some might wonder if it would lead to disorder if there was not one set of universal laws. When people who followed different sets of rules encountered one another, would there be confusion or an impasse? Would people operating under completely different rules constantly come in contact with one another and constantly have disagreements? Government advocates, such as Ayn Rand, with their hypothetical scenarios concerning two people who cannot come to agreement on a single arbitrator, create horrid pictures of a non-monopolistic system, but it must be reiterated that they are only hypothetical.

The major detail that is always left out of the scenario is on what property the two parties meet. The scenario assumes that strangers with no connection with each other and who have not agreed ahead of time what rules they are going to follow. If two astronauts are floating around in outer space and they come into contact with another, there could be the chance that the two do not abide by similar court systems, but in the real world, almost all encounters occur on property, which could enable the property owners to state the rules.[19] The property owners can lay down the law, stating that all patrons will necessarily follow their rules and procedures. This is similar to how stores operate with credit cards, with retailers stating that all customers must pay using certain credit cards, otherwise no transaction will take place. All encounters on a university campus could be under the jurisdiction of that institution, and all encounters in a shopping mall could be under its respective jurisdiction.

If each property owner were to set its own rules, would there be difficulty when people from different areas visited the property? Would it be impossible for each individual business to deal with so much "immigration" into its establishment? There could be many different ways to deal with these issues, such as joining larger trade associations, but there already is evidence that this is not a problem. Llewellyn Rockwell wrote about the entertainment park Disney World, saying, "It has even shown us how the immigration problem can be handled. Disney World attracts 30

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[19] Block described how private road owners could create their own traffic guidelines. "In a free market, each road owner will decide upon the rules his customers are to follow, just as nowadays rules for proper behavior in some locations are, to a great extent, determined by the owner of the property in question." Walter Block, "A Free Market in Roads," *The Libertarian Reader*, Tibor Machan, ed. (Totowa, N.J.: Rowman and Littlefield, 1982), p. 169.

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million visitors per year without disruption."[20] Even though visitors travel from all over the world, this private park does not experience problems with foreigners.

Profit-motivated parks create a security system that is accommodating for all of their guests. They need to act courteously to their customers, so it is no surprise that they would not follow the same procedures as government police. In a *Boston Globe* article, a patron of Disney quoted a Disney security supervisor as saying, "There is no Constitution at Disneyland. . . . We have our own laws."[21] Since Disney does not follow the exact same procedures as government police, does not mean that they will operate in an unjust way. A Disney spokesman stated, "Guest service and how we treat our guest continues to be our highest priority. . . . Our security people are friendly and helpful, but they are also very serious about the job they perform."[22] It is clear that even though private establishments such as Disney deal with many concerns, they do so in a manner that pleases their patrons. If visitors or employees of a private park are unhappy with the way they are being treated, they can choose to discontinue their personal business. Since many people choose to continue to do business with private firms such as Disney, it demonstrates that they are operating in a satisfying manner.

At parks such as Disney, there is no problem with unsolvable disputes between people from different parts of the globe whose governments have no connections with one another.[23] In the case of encounters on Disney property, the park has its own system to create order. While the thinkers of the scenario applicable to astronauts did not have outer space in mind, they probably did have in mind the common everyday encounters of strangers on the street. The fault in the logic is that they are thinking about lands that are currently owned and policed by the government.[24]

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[20] Llewellyn Rockwell, "Slouching Towards Statism," *The Free Market* 15, no. 1: 5.

[21] Anne Mulkern, "Accusers say Disney Security Isn't for Kids," *Boston Globe* (November 7, 1996): A10.

[22] Mulkern, "Accusers say Disney Security Isn't for Kids."

[23] Another example is a vacation cruise where there is absolutely no government. The ship is run by business people, and there are no government police anywhere on board. It is doubtful that there is any legal recourse for any of the vacationers, yet crime and disputes between vacationers do not seem to be a problem.

[24] The approach given here also differs from other advocates of private law. Certain theorists attempt to map out how multiple policing agencies would operate in one geographic region. Under their scenarios, each neighbor on a street could subscribe to a different protection agency. One can question why they assume that there would be multiple policing agencies in a given geographic location. At Disney World, there is only one security agency, as is true for most privately policed areas. It is a mistake to presuppose that the

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This being the case, there is the tragedy of the commons, where no one has any incentive or ability to exclude nefarious individuals from the streets.

In a sense, public roads are similar to the outer space example because nobody knows what criminal elements one will encounter on the poorly policed city streets. As soon as the issue concerns private property, the owners have incentives to make sure that their property is safe.[25] When discussing private police on government land, the issue can seem perplexing, but why must one assume that all land must be perpetually owned by the state? Lawless confusion is a problem that should be attributed to incapable governments, not to private establishments.

The issue of whether a plural existence of legal orders would lead to confusion, chaos, or inefficiency can once again be contrasted with the credit card industry. Different credit card firms offer different terms to their members, but this does not mean that the cards are incompatible. Each bank might have agreements with its members that are completely different from the others and still the customers are able to conduct business with one another. It is true that people often choose to conform to standards for the sake of simplicity but this is done voluntarily. The "one size fits all" solution is not required in the realm of consumer credit cards, nor is it necessarily required in the realm of law enforcement.

INTERPERSONAL UTILITY COMPARISONS

Critics of this analysis might make the claim that if consumers are allowed to purchase the services they desire, the enforcement of their laws will necessarily fall onto people and decrease others' utility. If private law sacrifices individuals' utility for the benefit of others, then the entity which supports or enforces

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structure of private law would fit into the mainstream economists' model of perfect competition. It is equivalent to believing that the free market would consist of many different hagglers bartering in an open market place, when in fact the free market can consist of large corporations. Large regions such as North America would likely have more than one law enforcement agency, but this does not mean different neighbors in the same gated community would hire competing firms. In some places, different agencies may very well operate side by side, but this is not something that we should assume.

[25] Block wrote about how on public streets it is common for men to verbally harass women, while on private property, such behavior can be prevented if desired. He wrote, "In the public sector, it is in no business person's financial interest to end the harassment. . . . But in the realm of private enterprise, every entrepreneur who hopes to employ or sell to women (or to men who object to this maltreatment of women) has a strong pecuniary incentive to end it." Walter Block, *Defending the Undefendable*, 2nd ed. (San Francisco: Fox and Wilkes, 1991), pp. 27–28.

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that private law would be just as guilty as violating rights as is the government. While most people might agree that the notion of interpersonal comparisons is not ideal, they still believe that it is a necessary evil that all theorists, including judges, economists, and the government, must estimate. Critics might claim, "Is it not true that when an undoubtedly guilty criminal is required to pay reparations his utility is being lowered?" They say that when defining aggression and deciding reparations, any arbitrator, even private, must rely on interpersonal comparisons of utility. While this attempts to justify the aggregationist methodology, the argument is faulty. Not only is the idea of comparing utility unreasonable, it is also unnecessary. A system of private arbitration can attempt to solve this problem, without any need to aggregate and/or compare utility.

Self described "utilitarians" such as David Friedman say that there is no way to avoid interpersonal comparisons of utility. Friedman believes that it is necessary to at least estimate and compare individuals' utility. He wrote:

> Consider a court awarding damages. If we really know nothing at all about other people's utility, how can a court decide how much someone owes me for breaking my arm? For all the judge knows, I enjoyed having my arm broken. Assuming that I disliked it, he has no way of knowing whether my disutility for a broken arm is measured by a penny or a billion dollars.[26]

Friedman and others say that one might as well base an entire legal framework around interpersonal comparisons of utility, because all proposed legal systems must necessarily make such comparisons.

Even if a court definitively finds an offender guilty, the punishment for the aggressor is not objectively clear. Regardless of whether the system is based on restitution or retribution, the judge must decide the extent of the damages owed by examining the harm suffered by the victim. Barnett wrote, "The subjectivity of punishment and reward suggests a potential problem with a restitutive theory that must be considered: Individuals attach their own value to the rights they possess, and the value of these rights cannot be measured objectively."[27] If the judge finds a mugger guilty of robbing money, should the criminal be required to

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[26]Friedman, *The Machinery of Freedom*, p. 179.

[27] Randy Barnett, "Pursuing Justice in a Free Society: Part One—Power vs. Liberty," *Criminal Justice Ethics* (Summer/Fall 1985):.66.

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pay back solely the money, or be required to pay additional damages to compensate for pain and suffering? It is impossible to know exactly how much pain was inflicted on the victim, so if the judge is to award reparations, without relying on interpersonal comparisons of utility, what criterion can he use?

Even some of the most severe critics of such comparisons sometimes concede that interpersonal comparisons of utility are necessary in cases such as damage awards. If the utilitarian asked, "Without interpersonal comparisons of utility, what would the exact level of damages be?" Block, an adamant critic of utilitarianism, acquiesced when he wrote:

> If he [the non-utilitarian] is honest, he would have to concede that there is indeed an element of arbitrariness involved in any such juridical finding, and further, that it would be justified to make it, despite this undeniable fact. There seems to be no possible better alternative. Complex choices cannot always be made in tiny watertight compartments, no matter how highly desirable.
>
> However, just because reality impinges with its rough edges does not mean we have to embrace it when there are alternatives. Damage awards do indeed violate economic strictures against interpersonal comparisons of utility.[28]

For Block, too, there seems to be no way to avoid making such comparisons, however unscientific they may be. It might seem that the aggregationist utilitarianism must be embraced, but this is not the case.

Insofar as legal systems are chosen on the market voluntarily by all parties involved, one need never rely on invalid interpersonal comparisons of utility. Private firms operating on the market can eliminate such a problem. To see how, let us borrow a page from the Health Maintenance Organization (HMO). HMOs decide which medical procedures are worth while and which are not.[29] In efforts to control costs, it does not allow all patients to receive unlimited supplies of medical treatment. While individual decisions must be made by doctors and administrators, it

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[28] Walter Block, "O.J.'s Defense: A Reductio Ad Absurdum of the Economics of Ronald Coase and Richard Posner," *European Journal of Law and Economics* 3 (1996): 277.

[29] Does Mr. X value his extra examination more, or does Mr. Y value his elective procedure more? Can the HMO see into each of its patients' minds? What if Mr. X really wants the examination? Is the HMO making invalid interpersonal comparisons of utility when it does not allow Mr. X to receive his examination, but it does allow Mr. Y to receive his procedure?

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is clear that all patients agreed ahead of time to follow the decisions of the organization. If patients thought the practices unreasonable, they would purchase another type of health insurance. It can be said that **all** patients' utility increases *ex ante* when they decide to join such an organization.

This analysis of health maintenance organizations applies to arbitrators; they need not rely on interpersonal comparisons of utility. It is true that individual judges must decide guilt and decide damages, but as long all parties involved chose the arbitrator, they agreed to follow the judge's decision ahead of time. This, as before, is a case where **both** parties' utility increases *ex ante*. Any party whose utility would certainly be unjustly sacrificed by an arbitration company would choose a different type of arbitration service, just as a patient would choose something rather than the unsatisfactory HMO. As long as an arbitration service is chosen voluntarily, the judges are merely enforcing the rules that the consumers have chosen. When a judge awards damages, he is doing so in a manner that had attracted the consumers in the first place. It therefore is not a matter of judges forced to make interpersonal comparisons of utility; rather, it is a matter of judges enforcing the rules according to the chosen contracts, and awarding damages in way that was agreed upon by all parties.

There are many ways in which an arbitration system could administer such decisions. At one extreme, there could be a complex set of written rules explaining the procedures for every imaginable case. With such a code, the judges would merely attempt to find the relevant guideline among the written rules for each specific case. This system could focus on the letter of the law, but would require an inordinate amount of guidelines to be created. For example, there could be tables of exactly how much thieves would have to pay for their crimes, depending on the circumstances. While theoretically it might be possible that this could be done, it is likely unfeasible to be able to address every single concern ahead of time. This being the case, arbitrators would need to instead rely on an alternative manner of judging disputes, rather than looking up each case in a complex rule book.

At the opposite extreme, there could be absolutely no rule book whatsoever, with each case decided by the will or even the whims of a certain judge. While this might appear undesirable, this is not necessarily the case. The judge could be a wise person, chosen because all parties have a great respect for his opinion. He could rely on his own moral judgment, which could be based on any number of sources, such as religious code or libertarian code or

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some other sense of justice. The judge would not need to have any set of rules to go by, but people could still trust his decisions.

While I have mentioned two extremes, consumers possibly could choose something in between the two, or possibly something that does not remotely resemble either.[30] An example that does falls somewhere in between these two extremes is the college Dean of Students, who has certain guidelines to follow, but also relies on personal judgment. When students decide to attend a college, they agree to abide by all of the rules and decisions of the Dean of Students. As a specific example, students today who choose a Jesuit college agree to abide by all of the decisions of the local person in charge of that order. If this Jesuit renders decisions undesirable by the students, they can transfer. The mere fact that a school has been in existence for many years, shows that the operation has been found satisfactory by the bulk of its consumers.[31]

The issue then is not whether in each individual case a party's utility is judged or lowered by the decisions made; the real issue is whether the parties agreed to abide by the rule of the arbiter. If the answer is affirmative, then it is evident that the total services provided by the arbitrators have *ex ante* increased the utility of all of the consumers. By electing to abide by certain rules, consumers have demonstrated the legal code they desire. This is analogous to consumers choosing the sort of health care or financial organization they wish.

This analysis applies to those with preexisting contractual legal arrangements. But what of disputes between strangers, such as a mugging on the street? Hasnas warned that one must not

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[30] We have grown accustomed to third parties judging affairs, but once again there is no reason to assume that all communities would desire such a structure. In some communities, there might be no need for any judges at all. For examples, most families do not rely on outside judges to work out family issues. Often, a third party cannot know enough about private business of a family to make a good decision, so in many cases it may not make sense to leave an issue to a relative stranger.

[31] What would happen if an arbitrator made bad decisions? This is analogous to asking what would happen if a bank showed bad judgment and decided not to repay any of its depositors. This rarely happens with banks, because they can only stay in business if they do not operate in such a manner. A bank that did not repay its creditors would not be in business for long, nor would an arbitrator who made unpredictable and undesirable decisions. Although some might think that banks do not default because of federal regulations and deposit "insurance," this is certainly not the case with overseas banks, which need to rely on established reputation or other means of insurance. It is possible that arbitrators would deal with similar constraints placed upon them by the market, which would offer consumers insurance and security. Consider again credit cards. If a consumer is charged erroneously, he does not get stuck paying for the fraud; instead, the banks often choose to assume responsibility.

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simply try to speculate on how private firms would perform the same tasks performed by government today. He wrote:

> Static thinking occurs when we imagine changing one feature of a dynamic system without appreciating how doing so will alter the character of all other features of the system. For example, I would be engaging in static thinking were I to ask how, if the state did not provide the law and courts, the free market could provide them in their present form. . . . Once this static thinking is rejected, it becomes apparent that if the state did not provide the law and the courts, they simply would not exist in their present form.[32]

Although there are many problems that need to be dealt with under public law enforcement, it is likely that private law would not be prone to the same obstacles. There are common police procedures to haul suspects into custody, but there is no reason to assume that even remotely similar practices would be used in a private system.[33] It is possible that private police would never need to drag anyone into court who has not made prior agreements with that specific legal institution. Addressing the issue of which court would have jurisdiction in a dispute between complete strangers, there is little reason to presuppose that this would even be a problem. Likely this is merely a public land problem, which would not occur in a private system.

Strangers do not come into conflict with one another on the golf course at a country club, because only members are only allowed to enter. On college campuses and in amusement parks such as Disney, all people on the premises have agreed to abide by the property owner's rules. Just as easily, were this legal, store and restaurant owners, as well as street and road owners,[34] would create private rules to govern all patrons. In the case of public roads, no one is able to exclude anyone or to arrange contractual rules, so it is unsurprising that people have become accustomed to the chaos spawned by the state. If private road owners were able to create rules only allowing those who had agreed to abide by them to set foot on the property, then they could eliminate most of the problems between strangers, and they would already have rules in place concerning how any remaining problems would be handled.

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[32] Hasnas, "The Myth of the Rule of Law," p. 228.

[33] Probably the best advice to give to private security for them to act in a just manner would be to not act anything like government police.

[34] See Block, "A Free Market in Roads," for the feasibility of this.

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Individuals and businesses could choose to interact with only those who agree to certain rules. Whenever people agreed to certain rules, doing so would demonstrate that they have increased their utility. Not all people would be forced to conduct business in such a manner, just as not all people are forced to belong to health maintenance organizations or to use credit cards. With HMOs and credit cards, non-customers are unable to do business with certain physicians and certain firms. It could be similar with law as well. Those who do not agree to abide by certain rules would not be able to do business with certain individuals and certain firms. When there is trade, or even absence of trade, it is done out of the volition of all parties involved.

When trade takes place, such as the agreement to follow certain rules or arbitrators, the utility of all parties involved increases. While it is true that judges would have to render decisions that could even seem arbitrary, they would be doing so in a way that was contracted for by the consumers. Thus when a judge awards damages in a case,[35] he does not need to rely on invalid interpersonal comparisons of utility; he renders his decision in a way that passes the market litmus test. Interpersonal comparisons of utility are invalid and cannot be justified. The only way to avoid such nonscientific calculations is for the government to discontinue intervening into the market and to allow the voluntary adoption of a system of private law.

CONCLUSION

There are numerous cases where parties choose to enter into private legal arrangements. On a local level, universities, condominium associations, and shopping malls all provide rules and security to create a safe atmosphere. On a global level, trading and arbitration companies provide guidelines and dispute settlements for businesses not under any single governing authority. If on both a local and non-local level there are numerous cases where government is not utilized, then a government monopoly in this field is hardly the necessity that is claimed by its apologists. Private companies already provide both local and non-

[35] There actually is no reason to assume that aggressors need to be forced to pay for their damages. With the example of credit card companies, they do not seek damages from those who default on their loans. Instead they create incentives, such as good credit ratings and continued business, for borrowers to want repay their loans. Credit card companies cease to conduct business with bad clients, but they do necessarily pursue damages against them. This example may be distorted by current court costs, but the model can be effective nonetheless.

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local protection for their customers, arguments to the contrary not withstanding.

Despite the existence of private law in modern society, the government nonetheless frequently intervenes. By forcibly imposing a uniform system on all people, the state prevents individual agents from purchasing the type and degree of services they desire. The unhampered market would allow people to procure a vast array of differing legal systems. This is not to say that competition would lead to chaos; quite the contrary, firms could offer a high degree of compatibility with rival legal systems, or they could offer high degrees of specialized services for their members. In all cases, customers would know what they were dealing with.

If customers agree to be bound by certain rules and procedures, this could eliminate the need for any interpersonal comparisons of utility, with the adjudication simply being made in accordance with the desires of all parties. Once we realize that a market in law would likely provide vastly different outcomes than anything we have at present, we do not need to spend time speculating on how private law enforcement agencies will solve problems that perplex today's governments. It is likely that many of the problems are only the products of the disorder caused by government law. It should be clear that government law enforcement is not perfect, not even desirable, and certainly not necessary. A market would allow private institutions to provide people with safety and security on an efficient and voluntary basis.

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INALIENABILITY AND PUNISHMENT: A REPLY TO GEORGE SMITH

N. Stephan Kinsella*

It can reasonably be argued that capital punishment is immoral or problematic because of the danger of executing an innocent person by mistake. George Smith, in a recent *Liberty* magazine article, in which he argues against capital punishment, does not take this approach.1 Instead, Smith states that capital punishment is never permissible, even where "*reasonable doubt is impossible* and where the crimes have been especially heinous."[2] In other words, even if we know beyond all doubt that someone has committed murder, it is impermissible to execute him (and also, presumably, to inflict less severe punishment).

Smith bases his argument on the concept of "inalienable rights," rights that "cannot be transferred, surrendered, or forfeited."[3] The argument runs roughly as follows. Libertarians must adopt one of two positions: (1) everyone has inalienable rights, in which case even a (known) murderer may not be executed; or (2) certain crimes may be punished with death, in which case the theory of inalienable rights must be abandoned. In Smith's opinion, position (2) "would be catastrophic, for we cannot construct a libertarian theory of justice except on a foundation of inalienable rights."[4]

Smith's entire argument, then, rests on the notion that libertarianism and justice require inalienable rights. There are either

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[1]George H. Smith, "A Killer's Right to Life," *Liberty* 10, no. 2 (November 1996): 46. Smith's article was subsequently criticized in the May 1997 issue of *Liberty*. See John C. Goodman, "Do Inalienable Rights Outlaw Punishment?," *Liberty* 10, no. 5 (May 1997): 47; Timothy Virkkala, "The Hollow Ring of Inalienability," *Liberty* 10, no. 5 (May 1997): 49; and Smith's response thereto, George H. Smith, "Inalienable Rights?," *Liberty* 10, no. 6 (July 1997): 51.

Smith is, by any standard, a thoughtful and provocative libertarian theorist. See, for example, George H. Smith, *Atheism: The Case Against God* (Buffalo, N.Y.: Prometheus Books, 1979); George H. Smith, *Atheism, Ayn Rand, and Other Heresies* (Buffalo, N.Y.: Prometheus Books, 1991).

[2]Smith, "A Killer's Right to Life," p. 46 (emphasis added).

[3]Smith, "A Killer's Right to Life," p. 46.

[4]Smith, "A Killer's Right to Life," p. 48.

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"inalienable" rights, or there are no rights at all. Yet Smith's arguments for why libertarianism requires that rights be inalienable are unpersuasive.

STANDING THREATS

One of Smith's approaches is to provide an argument for capital punishment based on the notion of self-defense, and then to attack this argument as insufficient. Smith writes:

> Some years ago during a summer conference, Randy Barnett and I sat down to see whether we could manufacture a defense of capital punishment. The best we could come up with was the notion of a "standing threat." This is based on John Locke's treatment of reparation and restraining, which "are the only reasons, why one Man may lawfully do harm to another, which is that we call punishment."[5]

Thus, according to Locke, we may kill an aggressor in self-defense since he has placed the victim and aggressor in a "state of war." Similarly, a case could be made that a convicted aggressor may be executed, on the grounds that he is a "standing threat" to others.

Rejecting this argument, Smith notes that, "To kill someone as a 'standing threat' in the name of self-defense may amount to little more than a surreptitious effort to smuggle capital punishment in through the back door of libertarian theory, having denied it entrance through the front."[6] Smith is correct here: it is not for reasons of self-defense that a victim has a right to punish an aggressor. However, this does not mean punishment (retribution or retaliation) is impermissible, only that self-defense is not sufficient to justify punishment.

BARNETT ON PUNISHMENT

Let me briefly note the following. Smith states: "For years [Barnett] has brilliantly elaborated on the pure theory of restitution as the only acceptable model of libertarian punishment, and he recognizes that the death penalty cannot be incorporated within this model."[7]

Admittedly, Barnett does appear to believe that even guilty aggressors have a right against punishment. But he does not

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[5]Smith, "A Killer's Right to Life," p. 68.
[6]Smith, "A Killer's Right to Life," p. 69.
[7]Smith, "A Killer's Right to Life," p. 68.

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claim to have justified such a right in his writings on restitution. In his published works on this issue, Barnett opposes a punishment-based system because he believes it may deter crime less than would a restitution-based system, and also because the unavoidable possibility of error can lead to "infliction of harm on the *innocent*".[8] He does not, however, provide a strong argument that it violates an actual aggressor's rights to punish him. Indeed, in his recent book *The Structure of Liberty*, Barnett states: "this analysis *cannot conclusively prove* that no combination of compensation or punishment can ever address effectively the compliance problem."[9] And further: "I do not claim to have completely demonstrated this proposition [that justice requires restitution, not punishment] either in my earlier writings, or in this book."[10]

Thus, although Barnett opposes punishment for a variety of reasons, those that are given to buttress his case in favor of restitution do not rest on viewing rights as inalienable and, in my view, Barnett has never demonstrated that rights are inalienable in the sense used by Smith.[11]

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[8]Smith, "A Killer's Right to Life," p. 228 (emphasis added). See also p. 197.

[9]Randy E. Barnett, *The Structure of Liberty: Justice and The Rule of Law* (Oxford: Clarendon Press, 1998), p. 237 (emphasis added).

[10]Barnett, *The Structure of Liberty*, p. 185 n. 36. See also pp. 228, 320, 321: "If men were gods, then perhaps imposing rewards and punishments on the basis of desert would be a workable theory." Also: "It has been noted that one who wishes to extinguish or convey an inalienable right may do so by committing the appropriate wrongful act and thereby forfeiting it." Randy E. Barnett, "Contract Remedies and Inalienable Rights," *Social Philosophy and Policy* 4 (Autumn 1986): 186, citing Diana T. Meyers, *Inalienable Rights: A Defense* (New York: Columbia University Press, 1985), p. 14.

[11]A second, less significant point, relates to Smith's doubts about the propriety of killing or imprisoning someone for who has shown himself to be a "standing threat" to others. Smith notes: "Objective standards and procedures seem problematic in this case, to say the least. (Perhaps I am lacking in imagination; if so, I have little doubt that more imaginative libertarians will come to my aid with ingenious solutions.)" Smith, "A Killer's Right to Life," p. 69. Barnett seems to have done just this. Barnett argues that the principle of "extended self-defense" justifies imprisoning (sometimes for life) those who have made a sufficiently unambiguous communication of a threat to another. Barnett, *The Structure of Liberty*, pp. 186–91. On pp. 213–14, he points out that because of problems of enforcement abuse and rule of law considerations, however, Barnett would limit this remedy to those persons who have communicated a threat to others by their past *criminal* behavior (i.e., those who have been convicted, perhaps multiple times, of a crime), and only if the previous crimes were proved beyond a reasonable doubt. See also Randy E. Barnett, "Getting Even: Restitution, Preventive Detention, and the Tort/Crime Distinction," *Boston University Law Review* 76 (February/April 1996): 157. I believe this limitation on the principle of extended self-defense is unduly restrictive, but that is neither here nor there.

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DEFENSE, RESTITUTION, AND INALIENABILITY

Another problem with Smith's assertion that rights are inalienable is just that: it is merely an assertion. Simply labeling rights over and over again with the modifier "inalienable" does not make it so.[12] Libertarians do not typically view rights as "inalienable" in Smith's sense, or put much weight on this concept. In fact, viewing rights as alienable is perfectly consistent with—indeed, implied by—the libertarian non-aggression principle.[13] Under this principle, only the *initiation* of force is prohibited; defensive, restitutive, or retaliatory force is not. One *does* alienate or forfeit certain rights by committing acts of aggression. This is exactly why it is permissible to use force to defend against or punish aggression, or to obtain restitution. One has a natural, not inalienable, right to be free from aggression.

Both defensive and restitutive force, like punitive (retributive or retaliatory) force, imply some alienation of rights. This is just why defensive or restitutive force is considered to be permissible: because the aggressor has alienated his right to be free

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[12]Smith says Jeremy Bentham held the theory of "inalienable rights" to be "nonsense upon stilts," and thus wonders if anyone who rejects inalienable rights must follow Bentham to his anti-libertarian conclusions. Smith, "Inalienable Rights?," p. 51. Yet Bentham said that *rights* were nonsense, and that *natural* rights were nonsense upon stilts. He did not use the modifier "inalienable" that Smith subtly puts in his mouth (though he does use the adjective "imprescriptible"). Jeremy Bentham, "Anarchical Fallacies," in *Human Rights*, A.I. Melden, ed. (Belmont, Calif.: Wadsworth Publishing, 1970), p. 28. Bentham opposed natural rights on the grounds that they were anterior to government, and thus his criticism is applicable to both alienable and inalienable natural rights. Thus, one can oppose Bentham's rights-skepticism by being in favor of *alienable* natural rights, which means that rejecting inalienability does not mean following Bentham down a non-libertarian path, as long as one does advocate *natural* rights.

[13]Many, probably most, libertarians maintain that rights are strictly "alienable," i.e. *some* actions are sufficient to alienate rights (although they usually also maintain that rights are "inalienable" *sometimes*, e.g. promising to be another's slave, as opposed to the commission of an act of aggression, does not serve to alienate rights; see section "Inalienability," and note 28, below. In fact, any libertarian who advocates the right to punish (or, really, even the right to self-defense) at least implicitly endorses that rights can be alienated. See, e.g., Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), p. 81, where he says "the criminal . . . loses his right *to the extent* that he has deprived another man of his" (emphasis in original); Barnett, "Contract Remedies and Inalienable Rights," p. 186 (quoted in note 10 above); Roger Pilon, "Criminal Remedies: Restitution, Retribution, or Both?," *Ethics* 88, no. 4 (July 1978): 348-57, 353 ("The criminal act has created rights in the victim; in the criminal it has both alienated rights and created obligations correlative to the newly created rights of the victim."); John Locke, *Second Treatise on Civil Government* (Buffalo, N.Y.: Prometheus Books, [1690] 1986) § 172 (power over one man's life "is the effect only of forfeiture which the aggressor makes of his own life when he puts himself into the state of war with another"); also other sources quoted in N. Stephan Kinsella, "A Libertarian Theory of Punishment and Rights," *Loyola Los Angeles Law Review* 30 (1997): 607–45, 620–22, n. 37.

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of such force. If one is opposed to punishment on inalienability grounds, how can one then endorse defensive or restitutive force? As John Goodman correctly notes, Smith's argument against the death penalty is an argument against punishment as such, even against defensive or restitutive force.[14] Thus, to be consistent, Smith has to either object to *any* use of force against an aggressor, including even self-defense; or admit that rights are not truly inalienable.[15]

So which is it? Is Smith inconsistent, or does he consistently object to all force? Smith has apparently flip-flopped on this issue. At first, he seems to acknowledge that rights are not really inalienable: "I agree with Locke that reparation (restitution) and restraint (self-defense) are the only justified uses of violence in a free society."[16] Yet later, Smith appears to change his mind:

> Goodman argues that my case against capital punishment, if consistently applied, would militate against all forms of punishment, *such as fines and imprisonment*. I freely concede that this is a major problem for the libertarian theory of restitution. . . . Can we imprison someone and compel him to work off his debt? . . . These and other questions have not been adequately examined, much less answered, by libertarians, and I remain uncertain about how to deal with them.[17]

Smith's view of the inalienability of rights has clearly led him down a dead end. If he is consistent, he must condemn all uses of force, even defensive and restitutive. (Such a position might be referred to as "stupid," or, perhaps, "Darwinian," pacifism.) If, however, he admits that defensive and restitutive force are per-

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[14]Goodman, "Do Inalienable Rights Outlaw Punishment?," p. 47.

[15]The following thought-experiment, from the ever-fertile libertarian mind of Walter Block (as relayed to me by Joe Salerno), illustrates why a proponent of restitution must, in principle, be willing to support capital punishment as well. Block asks, what if it were possible to actually provide true restitution to a murder victim—to restore his life—by connecting a "life-sucking" machine to the murderer, and transferring his life essence to the dead victim? This would bring the dead victim back at the cost of the killer's life. Surely, a restitutionist would have to be in favor of this, as it is simply a type of force used to enforce restitution, and the purpose of restitution is to "restore" the victim. But what is the difference, in principle, between killing the aggressor to "restore" the victim, and killing the aggressor as punishment? In both cases, the aggressor is intentionally killed, against his will, in response to his earlier aggression. It would seem that in this case, the restitutionist, like the retributionist, supports executing murderers, and thus cannot claim that a murderer has, in principle, an inalienable right to life.

[16]Smith, "A Killer's Right to Life," p. 69.

[17]Smith, "Inalienable Rights?," p. 55 (emphasis added). Note that Smith here confusingly refers to "fines and imprisonment"—presumably forms of restitution—as "punishment," even though a supposed advantage of restitution is that it is *not* punitive.

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missible, he has admitted rights are not inalienable, and thus, he cannot oppose punishment on grounds of inalienability.

THE RIGHT OF PROPORTIONAL PUNISHMENT

As I have argued at greater length elsewhere,[18] an individual has a right to use force against an aggressor in response to aggression. This right to use force can be utilized for a variety of purposes: for self-defense during or before the act of aggression, for revenge, to obtain restitution, to prevent the aggressor from committing further crimes, or to deter others from committing crimes. What the victim wants to use the right *for* is his business. But the reason *why* a victim has a right to retaliate or defend against an aggressor is that the aggressor cannot sensibly withhold his consent to retaliatory, defensive, or restitutive force (these may be considered different types of *responsive* force, that is, *non-initiated* force, force which is *in response to* initiated force). To use related legal terminology, the aggressor is "estopped," or precluded, from denying the victim's right to use (proportional) responsive force, since such a denial would contradict the aggressor's view that the use of force *is* permissible (the view demonstrated by the act of aggression).[19]

Thus, eye-for-an-eye type proportional punishments are legitimate in response to aggression. A murderer, therefore, is estopped from objecting to his own capital punishment. He can no longer claim a right to be free from such treatment. Since he previously had such a right, the right that he previously had must have evaporated. We may say, then, that his right to not have force used against him has been alienated (or forfeited, waived, abandoned, relinquished, surrendered, or lost; the terminology is not important).[20]

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[18]See Kinsella, "A Libertarian Theory of Punishment and Rights"; also N. Stephan Kinsella, "New Rationalist Directions in Libertarian Rights Theory," *Journal of Libertarian Studies* 12, no. 2 (Fall 1996): 313–26; N. Stephan Kinsella, "Punishment and Proportionality: The Estoppel Approach," *Journal of Libertarian Studies* 12, no. 1 (Spring 1996): 51–73. This argument draws on and is related to Hans-Hermann Hoppe's "argumentation ethics" defense of libertarian rights. See, e.g., Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Boston: Kluwer Academic Publishers, 1989), p. 131.

[19]For a discussion of proportionality, see Kinsella, "A Libertarian Theory of Punishment and Rights," p. 631.

[20]Another error lies in the very title of Smith's article: "A Killer's Right to Life." Under libertarianism, one has a right against the *initiation* of force—against aggression. But punishment is not *initiatory* force; it is force *in response* to initiated force. Part of Smith's confusion here lies in thinking that libertarianism upholds some actual right to *life*. There is no right to life. There is a right against aggression. That is

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THE UTILITY OF PUNISHMENT

There are further errors in Smith's article. Consider, for example, Smith's view that restitution is superior to punishment as a basis for criminal justice. Smith argues that punishing an aggressor "does not restore or equalize rights; it simply wipes out another set of rights," and that allowing retaliation only provides, at most, "a sense of emotional balance" to the victim. Several responses to this argument can be made. First, Smith here begs the question of whether rights are inalienable by assuming that the aggressor *has* a set of rights to be violated. If the aggressor's rights were alienated, (proportionally) punishing him does not wipe out his rights, as he had none left to wipe out.

Second, just because punishment does not restore rights, it is not clear why restitution is automatically superior, since restitution does not restore rights either. It is true that the consequences and fact of an act of aggression can never be undone. The indignity will always have been suffered. Any response by a victim, including restitution and retribution, will always be an imperfect remedy. Indeed, this is one reason why aggression is impermissible: because the harm done thereby is literally undoable, incalculable, and not subject to an adequate remedy.[21] A victim will always remain, to some extent, a victim.

This does not, however, dictate that the victim should be artificially restricted in choosing among various imperfect remedies. Admittedly, both inflicting punishment on an aggressor (retribution) and extracting monetary damages from him (restitution) are imperfect remedies. But why not let the victim decide which one, or which combination of these, he prefers?[22] After

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why libertarians advocate the non-aggression axiom or principle, not the "life axiom." An innocent person can use his right against aggression to protect his life, if he so chooses, or he may commit suicide or waste his life in other ways. Thus, an innocent person may be said to have a right to life, if it is kept in mind that the so-called "right to life" is merely derivative of—a consequence of—the primary right against aggression, just as the right to free speech is derivative of the right to own private property and the right against aggression. (On the link between the rights of freedom of speech and private property, see Rothbard, *Ethics of Liberty*, chap. 15.) An aggressor, on the other hand, no longer has a right against the imposition of force, and thus his life is in peril. The aggressor, therefore, no longer has a "right to his life," such that it was.

[21]Barnett, an advocate of restitution and opponent of punishment, recognizes this, and for this reason emphasizes the importance of crime *prevention*. See Barnett, *Structure of Liberty*, pp. 159, 184–90, esp. 189.

[22]On giving victims the option of what type of punishment to apply or whether to seek restitution or some blend of punishment and restitution, see Kinsella, "A Libertarian Theory of Punishment and Rights," pp. 633-36; Pilon, "Criminal Remedies," p. 356; Barnett, *Structure of Liberty*, p. 183 n.32; Joseph Ellin, "Restitutionism Defended," *Journal of Value Inquiry* (forthcoming, Winter 1998–99).

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all, the victim did not ask to be made a victim. He did not ask to be put in the position of having only two imperfect possible remedies available to him. If a victim prefers to torture his torturer, who is Smith to say that the victim's preference is not rational? Unlike Smith, I am not so unwilling to allow victims to attempt to attain "a sense of emotional balance," if that is all that is possible to them. (Like Barnett, however, I am concerned about the unavoidable possibility of mistakenly punishing the innocent, and thus admit the appeal of a restitution-based system in order to avoid punishing innocents, but not for reasons of inalienability.)

The right to inflict (proportional) punishment on one's aggressor can be useful in other ways as well. Most significantly, perhaps, it may be utilized to reach a more objective determination of the proper amount of restitution. For example, the victim may trade all or part of his right to retaliate for a payment ("ransom") or other service by the aggressor, i.e., the aggressor buys his way out of punishment.[23] A serious aggression leads to the right to inflict more severe punishment on the aggressor, which would thus tend to be traded for a higher average amount of ransom or restitution than for comparatively minor crimes. Further, a victim especially offended or traumatized by aggression (and thus subjectively "damaged" more severely) will tend to bargain for a higher ransom. Also, richer aggressors will tend to be willing to pay more ransom to avoid the punishment the victim has a right to inflict.[24] Thus, allowing punishment to be traded for damages solves the so-called millionaire problem faced under a pure restitution system, where a rich man may commit crimes with impunity, since he can simply pay easily-affordable restitution after committing the crime.

For these reasons, allowing the option of punishment can help arrive at a more objective measure of restitution damages.[25]

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[23]For previous suggestions of the possibility of criminals buying their way out of punishment, see Rothbard, *Ethics of Liberty*, pp. 86, 89; Pilon, "Criminal Remedies," p. 356.

[24]See Kinsella, "A Libertarian Theory of Punishment and Rights," pp. 644–45. See also Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," *Ethics* 87, no. 4 (July 1977): 297, reprinted in *Assessing the Criminal: Restitution, Retribution, and the Legal Process*, Randy E. Barnett and John Hagel III, eds. (Cambridge, Mass.: Ballinger, 1977); Roger Pilon, "Criminal Remedies," p. 351. For a "law-and-economics" discussion of this issue, see David D. Friedman, "Reflections on Optimal Punishment, or: Should the Rich Pay Higher Fines?," *Research in Law and Economics* 3 (1981): 185–205.

[25]On the issue of determination of the proper amount of damages, see Bruce L. Benson, "Restitution in Theory and Practice," *Journal of Libertarian Studies* 12, no. 1 (Spring 1996): 79–83; Rothbard, *Ethics of Liberty*, pp. 88–89. For a law-and-econom-

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And even if punishment is banned and is not an actual option—because of the possibility of mistakenly punishing innocents, say—an award of restitution can be *based* on the model of punishment. E.g., a jury could be instructed to award the victim an amount of money it believes he *could* bargain for, given all the circumstances, *if* he could threaten to punish the aggressor. This can lead to more just and objective restitution awards than would result if the jury is simply told to award the amount of damages it "feels" is "fair."[26]

The right to retaliate could also be used to justify "enslaving" the aggressor and put him to work for a time to generate income for the victim (restitutionists like Barnett support this use of force against the aggressor, but do not consider it to be punitive, but rather necessary to enforce restitution).[27] Or suppose an aggressor is very poor, and otherwise unable to pay monetary damages to the victim. In this case, the threat of inflicting severe punishment on the aggressor may induce the aggressor's relatives or friends to pay off the victim to spare the aggressor from being punished. The victim would thereby be compensated even though the aggressor is penniless, whereas the victim would be totally uncompensated if no threat of punishment were available to move the aggressor's relatives to chip in. (In a restitution-based system, a poor aggressor who is imprisoned in a work-facility designed to generate income payable to the victim may also find friends and relatives to pay off part of his debt to have him released earlier. However, as the aggressor in this case faces only a limited and usually temporary form of "slavery" and not more severe punishment, the motivation for others to bail him out would probably be reduced.)

INALIENABILITY

The theory of inalienability has been plagued by confusion, vagueness, and inconsistency. The concept is typically applied to

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ics discussion of this issue, see David D. Friedman, "What Is 'Fair Compensation' for Death or Injury?," *International Review of Law and Economics* 2 (1982): 81–93.

[26]I believe this latter approach is consistent with and supplements Barnett's theory of a restitution-based justice system, since Barnett nowhere specifies any objective standards or criteria by which a judge or jury is to determine the amount of restitution a victim is to receive for a non-economic crime like murder, rape, and the like. He specifies only that the aggressor must "compensate" the victim for the "harm caused," to "restore" the victim. Barnett, *Structure of Liberty*, 159, 185. Of course, how much compensation is needed to compensate for a rape is a difficult question, and, of course, no amount of restitution can ever "restore" a murdered victim.

[27]Barnett, *Structure of Liberty*, pp. 174–84.

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the issue of whether a *non-aggressor* can alienate his rights by a mere contract or promise, i.e. by a peaceful action. For example, may one sell oneself into slavery, or enter into a binding, enforceable contract to perform services? Libertarians come down on both sides of this question, but tend to say that rights are "inalienable," i.e., one may not sell oneself into slavery.[28] Most libertarians hold this view of inalienability, which I will refer to as the standard or "limited" view of inalienability, since adherents of this view usually also maintain that acts of aggression *do* alienate rights.[29] In this view, only violent actions serve to alienate rights. Smith has used the label "inalienability" in an idiosyncratic way to mean that even *aggressive* actions do not alienate rights.

What, then, is the proper, libertarian view of inalienability and rights? Consent is the crucial element to focus on here. If a person consents to an action that would otherwise violate his rights, there is no rights violation. Boxers in a ring, or duelers dueling, do not have their rights violated when struck by fist or bullet. This is because they consented to these exchanges of force.[30] *To* alienate *one's right means that one is* unable *to withhold consent to some action that would otherwise infringe the right if there were no consent.* Thus, a right is alienated by somehow rendering it impossible to object to the action that the alienated right would otherwise prohibit. One does something now, that prevents one from withholding consent in the future, thereby effectively alienating the relevant right. To alienate a right, then, is to *irrevocably* grant the relevant consent to another.

Is it possible to irrevocably grant consent? Smith, an advocate of what may be called the "strong" view of inalienability, would say it is not possible under any circumstances (except, perhaps, for defensive or restitutive force). Proponents of the limit-

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[28]See, e.g., Barnett, *Structure of Liberty*, pp. 77–82; Barnett, "Contract Remedies and Inalienable Rights," pp. 186–95; Rothbard, *Ethics of Liberty*, pp. 40–41, 134–36; Tibor R. Machan, *Human Rights and Human Liberties* (Chicago: Nelson Hall, 1975): pp. 116–17; Smith, "A Killer's Right to Life," p. 49; Smith, "Inalienable Rights?," p. 54.

[29]See note 13 above.

[30]As Richard Epstein explains, "The case for the recognition of consent as a defense in case of the deliberate infliction of harm can also be made in simple and direct terms. The self-infliction of harm generates no cause of action, no matter why inflicted. There is no reason, then, why a person who may inflict harm upon himself should not, prima facie, be allowed to have someone else do it for him." Richard Epstein, "Intentional Harms," *Journal of Legal Studies* 4 (1975): 411. See also Kinsella, "A Libertarian Theory of Punishment and Rights," pp. 610–11. For an unorthodox libertarian view that duelers do not actually "consent" since it is only engaged in due to the "threat of disgrace," see T. Patrick Burke, *No Harm: Ethical Principles for a Free Market* (New York: Paragon House, 1994): pp. 192, 268 n. 15.

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ed view of inalienability, by contrast, hold that it is possible to do this by aggressing, but not by merely making an agreement or promise. (Those rare libertarians, like Walter Block, who believe rights may be alienated even by a non-violent action like agreement, hold what may be viewed as a "weak" view of inalienability.)

Let us examine the three ways that consent possibly could be irrevocably granted: by physical means, by aggression, and by voluntary agreement. The physical, or physiological, means refers to a person voluntarily undergoing some process that literally places him under the power of another (e.g., drugs, surgery).[31] This is akin to committing an act of suicide or "zombicide," and is not of particular interest, since after the zombicide is complete, the zombie presumably does not even try to run away or withhold consent from his master.

Committing an act of aggression is a clear-cut means for alienating (some of) one's rights. As explained above,[32] an aggressor is estopped from withholding consent to the victim's proposed use of (proportional) retaliatory force, since such a denial would contradict the aggressor's view that the use of force is permissible. An act of aggression is a way of irrevocably granting consent to punishment. This is exactly why an act of aggression serves to alienate rights: because the act of aggression conclusively demonstrates the aggressor's view that aggression is proper, thus precluding him from consistently objecting to the victim's use of (proportional) retaliatory force. The strong view of inalienability (Smith's view) is, for this reason, untenable.[33] So which view is correct, the limited view or the weak view?

This depends on the answer to the following question: Can one irrevocably grant consent by voluntary agreement, such as a promise or contract to be another's slave? Barnett recognizes the importance of consent here:

> The crucial question . . . is whether Ann's current consensual choices can limit her right to revoke her consent in the future. Having consented to let Ben touch her or to enter the [boxing] ring with him, may she be forced to carry through with her commitment after she has changed her mind?[34] This is a difficult and complicated ques-

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[31]See, e.g., discussions of this in Smith, "Inalienable Rights?," p. 54, and Barnett, *Structure of Liberty*, 78 n. 39.

[32]See note 18 above, and accompanying text.

[33]See notes 10 and 13 above.

[34]Barnett, *Structure of Liberty*, p. 81.

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> tion. Some argue that a contract is a contract, and may be enforced. This view is based on the theory that one is a self-owner, entitled to full control of all of one's property, including one's body, and that this control comprises the ability to sell one's body.

Most libertarians, however, seem to hold the limited view of inalienability, whereby aggression does alienate rights, but promising to be someone's slave does not. Advocates of this view typically argue that such contracts are not enforceable because there is some sort of logical impossibility involved in voluntarily alienating all of one's rights in this manner.[35] For example, some argue that it is literally impossible to transfer one's actual will to another, and thus a promise to do so is null and void; title thereto cannot be transferred. It is like contracting to sell the sun to someone. Such a contract, having an impossible object, would be null and void from the outset.

My view is that the impossibility reasoning typically given to argue that consent cannot be irrevocably granted is fallacious, and has helped to muddle the issue of inalienability. For example, if the "impossibility" of literally alienating one's will means that it is impossible to be bound by contract to act as someone's slave, why is it not "impossible" to imprison an aggressor to enforce restitution? After all, even a convicted aggressor still has a will. Why is it not "impossible" to defend oneself with force? And yet it is *not* impossible for consent to be irrevocably granted, as we have seen; this condition exists for a justly imprisoned aggressor. Recipients of defensive, restitutive, or retaliatory force all retain a will, which is overwhelmed with some type of responsive force.

The key here is to focus on force and consent, for to keep someone as a slave, it is not necessary that the will be physically alienated. Rather, in order to enslave someone, the slave-owner must be *entitled* to use force against the slave if the slave disobeys or tries to run away. The impossibility of actually alienating one's faculty of volition is irrelevant. It is the legitimacy of using force that matters, and this depends on consent.

Putting the issue this way, however, provides a different argument why consent cannot irrevocably be granted by mere agreement or promise—why the prospective slave may change his mind in the future and withdraw his consent. If *A* promises (or contracts, or agrees; the terminology is not important) to be *B*'s

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[35]See note 28 above.

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slave, this is no doubt an attempt to consent *now*, to force inflicted in the future. If *A* later changes his mind and tries to run away, may *B* at that point use force against *A*?

This is the crucial question. If the answer is yes, this means that *A* has no right to object, and has effectively alienated his rights. I would say no, however, simply because there is no reason why *A cannot* withdraw his consent. Unlike the case of aggression, where the aggressor's prior aggression estops him from objecting to the use of retaliatory, force, *A has not committed aggression* against *B*. Thus it is not inconsistent for *A* to later object to the use of force. All *A* did previously was utter words to *B* such as "I agree to be your slave." But this does not aggress against *B* at all, any more than does uttering the insult, "You are ugly." Words per se do not aggress, which is one reason there is a (derivative) right to free speech. In a nutshell, a would-be slave-owner must be entitled to use force against the would-be slave in order for the slavery agreement to be enforceable and for rights to be alienated in this manner; but the would-be slave has simply not initiated force against the would-be slave-owner. The would-be slave-owner is thus *not* entitled to use force against the slave; hence no rights were alienated.[36]

Thus, I conclude that a slavery agreement is not enforceable. Rights are not completely inalienable, as Smith contends, for aggression can alienate rights. We must reject the strong view of inalienability. However, rights are inalienable in the limited (and more conventional) sense that one cannot irrevocably grant consent to aggression in the future by way of a mere promise or agreement. This is not because of any impossibility in alienating one's will, but because a promisor has not committed aggression. One retains the right to change one's mind, absent special circumstances.[37] The limited view of inalienability seems to be the most sensible.

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[36]Proponents of the weak view of inalienability, like Walter Block, on the other hand, would argue that the sale of one's body confers ownership of it to another person, and that subsequent violence against the sold body by the new owner is no more aggression than is self-mutilation. I remain to be convinced by this line of argument, primarily because there seems to be a relevant difference between the rights related to one's body and rights in homesteaded resources, due to the different justifications for and nature of these rights.

[37]E.g., an airplane pilot may be forcibly restrained by passengers from parachuting out in mid-flight. See Barnett, *Structure of Liberty*, pp. 81–82. The reason the parachuting is arguably aggression is that this action can be considered to be the cause of the physical harm that will befall the passengers, much like one who shoots a gun or drops a bomb is an aggressor. Arguments could be constructed for other special cases, such as agreeing to donate an organ which causes the recipient to rely on this, or enlisting in a volunteer army at a time of peril.

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The right to alienate external resources is not limited, however, because of crucial differences between rights pertaining to one's person and rights of ownership in homesteaded goods. The right to homestead external resources is derivative of and distinct from the basic right against non-aggression. External scarce resources are appropriated and acquired, and held by intention (it is this that distinguishes ownership from possession), and thus can be abandoned or alienated by a sufficient expression of intention, i.e. a contract. For this reason, under the libertarian title-transfer theory of contract, one can alienate particular property titles, i.e. titles to external (homesteadable) scarce resources owned by an individual. In this sense there is a distinction between title to property, which is alienable by mere contract; and rights related to one's body, which are not alienable by promise or contract (speech act) but are alienable by act of aggression.[38]

To summarize, then, one may object to certain acts of aggression; or one may grant consent to allow the otherwise-prohibited action to take place. The right against aggression may be alienated, but only by *irrevocably granting* consent, which may be done only by committing an act of aggression. A non-violent action such as a promise or agreement to do something with one's body,

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[38]See also Barnett, *Structure of Liberty*, p. 82. There has been great confusion in the area of contract theory, which has perhaps contributed to the confusion in inalienability reasoning. For example, the "impossibility" reasoning seems to be based on the groundless assumption that contracts are based on the concept of "binding promises," or on an improper analogy between homesteadable scarce resources, which can be acquired or abandoned, and rights against aggression, which relate to one's body. However, contracts need have nothing to do with promises, and there is a difference between rights to acquired external resources and rights to one's body. For more on the libertarian theory of contracts, see Randy E. Barnett, "A Consent Theory of Contract," *Columbia Law Review* 86 (1986): 269; Rothbard, "Property Rights and the Theory of Contracts," in *Ethics of Liberty*, pp. 133–48; Williamson M. Evers, "Toward a Reformulation of the Law of Contracts," *Journal of Libertarian Studies* 1 (Winter 1977): 3–13. Thus, the framework for rights, punishment, and consent put forward herein also has implications for other aspects of libertarian theory, which cannot be addressed in detail here. For example, the view of the unenforceability of slavery contracts also applies to contracts for personal services, and, indeed, to all promises in general, and thus to the theory of contracts. The theory of detrimental reliance is also relevant here. In my view, promises *per se* are not enforceable, and contracts are not best viewed as enforceable promises but as exchanges or alienations of titles to acquired tangible property external to one's body. Some promises may be enforceable, due to detrimental reliance, but only in cases where the reliance not circular, and thus plays a causal role in harming another, and such enforceable promises are something different from contract itself. This view of contracts, inalienability, and rights presented herein also has implications for the distinction between the alienability of homesteadable property versus the (limited) inalienability of rights related to one's body. Elaboration of these ideas will have to await a subsequent article.

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on the other hand, does not alienate rights, because the consent may be withdrawn at any time in the future, with certain exceptions. This is because a promise now to consent in the future to violence does not commit aggression against the promisee.

CONCLUSION

If Smith is right that even a murderer has a right to not be killed, then it is wrongful aggression to kill the aggressor, just as it is wrongful aggression for a murderer to kill the victim. Then it is no longer the initiation of force that is impermissible; it is force in general, even retaliatory, defensive, or restitutive force. Without a right to respond to aggression, the non-aggression principle goes out the window, as does the distinction between aggressor and victim. Smith's defense of the strong version of inalienable rights thus undermines what is surely the heart of libertarianism, the non-aggression principle.

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PRIVATE POLICE: A NOTE

Patrick Tinsley*

> A state which dwarfs its men, in order that they may be more docile in its hands even for beneficial purposes–will find that with small men no great thing can really be accomplished; and that the perfection of the machinery to which it has sacrificed everything will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.
>
> – John Stuart Mill

There are those to whom the question of whether to privatize the nation's police forces is mere academic whimsy—a question of consequence only to the eggheads and cranks of the Academy, not to those who so solidly inhabit the "real world." Most of these believe the enforcement of law to be the exclusive province of the state. Such a belief is rooted in an obvious falsehood: the notion that there is a unique and singular commodity called "enforcement of law." There is, in fact, no such singular commodity.[1]

Enforcement of law is a phenomenon that admits of infinite degrees and permutations. Take the case of a jewelry store. The theft of its wares is a crime under the law. But the jewelry store does not rely exclusively—or even primarily—on the majesty of the state's enforcement of that law for its own security. The jewelry store engages the services of manifold private protection outfits: it takes out an insurance policy on its gems, which are kept under a locked glass display case, which can only be opened by an employee, who is under the ever-vigilant eye of video monitoring equipment, and who watches the customers with the aid of convex mirrors, and keeps the store's cash in a locked vault, which is in a back room, which is in turn locked at closing time, and the store's alarm activated as the employees leave and the armed night watchmen arrive. All of these are provided by private companies in the business of providing "security," and all of which should give pause to those who consider the enforcement of law uniquely the franchise of the government.

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*Patrick Tinsley is a recent college graduate.

[1]See Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 219–20.

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None of this is to deny that the enterprise of law enforcement in America is largely the self-incurred responsibility of the state. But with responsibility comes reckoning. The government maintains police forces which collectively discharge a duty to serve and protect the law-abiding citizenry. Have the government's police forces fulfilled this duty?

The evidence suggests unambiguously that they have not. Crime rates per 100,000 people—whether measured by total crime or violent crime or property crime—increased by not less than 100% in the decade of the 1960s.[2] Such evidence does little to commend the service and protection afforded us by our public police. That there has issued forth, against such unfriendly evidence, an argument that calls upon us to blame for the surge not the police, but rather the increasing tendency on the part of the public to *report* crime, is testimony to the inexhaustible malleability of the arguments of the American left.

Factual agreement, it seems, attaches to only the most incontrovertible of data: the murder rates. It is generally conceded that swollen murder rates reflect something other than a growing tendency to report the deed—what with corpses presenting a rather conspicuous presence and murdered persons a conspicuous absence.[3] And the murder rates in large American cities between the years of 1963 and 1971—a period of less than a decade—escalated at a show-stopping 100%. This leads an urbanite to the clear conclusion that he is more likely to be murdered than was an American soldier likely to be killed in World War II combat—a datum in which the safety afforded to American citizens by the public police fails to compare favorably with that afforded American soldiers by the Nazis.[4]

Such a dismal failure on the part of the public police lends a terrible immediacy to the call for privatization. The following will attempt to sketch out the workings of private protection agencies while meeting the most significant objections.[5]

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[2]U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, D.C.: U.S. Government Printing Office, 1974), p. 413.

[3]See Thomas Sowell, *Knowledge and Decisions* (New York: Basic Books, 1980), p. 274.

[4]James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975), p. 17. See also Sowell, *Knowledge and Decisions*, p. 274.

[5]A common objections is that while the government may be too large, libertarians who agitate to privatize the public police would throw out the baby with the bathwater. The classic rejoinder to this claim was made in a speech by Harry Browne at the 1996 Libertarian Party National Convention: "We libertarians *are* throwing out the baby with the bathwater—Rosemary's baby!"

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PRIVATIZATION AND THE POOR

It will be roundly objected that private policing is undesirable insofar as only the wealthy could afford to implement it, leaving the poor without mechanism of legal protection. There are several solutions to this contingency consistent with the operation of a free market in law enforcement. First, however, it must be made clear that a perfect system of law enforcement is not, this side of paradise, an option. Therefore, in order to overcome the argument for privatization, it does not suffice merely to expose therein a flaw or potential flaw, e.g. that the poor could not (sufficiently) afford police protection. It must be concurrently demonstrated that the public enforcement of law is more effective in these regards vis-à-vis the private. Given that America's poorest areas are among its most crime-ridden—so much that *ad hoc* citizen-volunteer patrols are currently mobilized to augment the disintegrating capacities of public police—one should expect no such demonstration to materialize.

Now, onward to the issue of how the poor shall obtain protection via the free market. The poor tend not to own their own homes—the poor, it is safe to generalize, are a tenant lot. They inhabit temporarily and voluntarily the property of a landlord and they do so because he has offered housing and related amenities that justify incurring the cost at which they are offered. In order to attract tenants, then, a landlord will need to provide police protection for his property and its inhabitants, or else he will be quickly out of his property and even quicker out of his tenants. The Bates Motel was never much of a hot spot.

And when the poor are not on their (rented) property, they are, as a matter of definition, on someone else's. There, as participants in the so-called free rider problem, the poor shall be the beneficiaries of "free" police protection.[6] Toward clarification, here is an analogy. There are products for which the bother of charging money outweighs the prospects for profit; these products are thus offered free of charge to the individual user, more or less in affiliation with the sale of coadunate goods. Examples of this phenomenon abound: book matches are given away with and without the sale of tobacco products; bathrooms, whether in restaurants or department stores or gas stations, are often open to customers and the general public alike.[7] Police protection could operate likewise.

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[6]See Walter Block, "Public Goods and Externalities: The Case of Roads," *Journal of Libertarian Studies* 7, no. 1 (Spring 1983): 1–34.

[7]See David Friedman, *The Machinery of Freedom* (New Rochelle, N.Y.: Arlington House, 1973), pp. 137–38.

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Private property owners using their property for commercial purposes would employ a protection agency to ensure that it is commercial, and not criminal, activity that reigns.[8] Those of the poor—and the not-poor—would thereby enjoy police protection while on private, commercial property. This arrangement is, to a large extent, operative at present. One fears not that one's purchases will be swiped in a shopping mall—there are mall security guards to prevent that; and one frets not at all, in a bank, that one's cash will be lifted—there are armed security guards to discourage such things. It is when one is on public property, such as Central Park, protected by a public police that halts the criminal elements much as a sieve halts water, that one counts one's self lucky to escape with life, limb, and maidenhead preserved. To illuminate the difference between the public and the private enforcement of law, simply imagine the rate of criminal activity at Central Park as prevailing at, say, Macy's.

There is yet another manner in which the free market could confer security services upon the poor. Victims of a crime—poor or otherwise—could be awarded by the (private) courts a claim for damages in an amount which corresponds to the gravity of the crime. Such a claim would be transferable property.[9] Victims, then, would have the option of selling a claim for damages to a collection agency, which would proceed to apprehend the responsible party and exact the fee. (Just as many poor plaintiffs command the services of a lawyer by agreeing to split any damages forthcoming.) This action may be combined with a contractual agreement between the victim and the agency to again collaborate should a further crime be perpetrated against the former party. Such a pact would cement the initial relationship between the victim and the collection agency, with the agency's commitment to exact future incurred damages engendering the protection of the victim via the power of *deterrence*. That is to say, the collection agency that contracted to so serve a given individual would not provide that individual with active law enforcement, e.g., cops on foot, or bicycle, or steed, or in cruisers; rather, the contract itself would provide the individual with

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[8]It is good to bear in mind that this author advocates the privatization of the nation's streets. Streets and sidewalks would be, under privatization, commercial property. For more on how roads could be paved, preserved, and protected on the free market, see Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 202–18. Particularly noteworthy is the anecdote Rothbard therein relates, to the effect that the level of crime in New York's Times Square, during a public police strike, was not a whit higher than the level of crime that prevailed when they were supposedly *on* the job.

[9]See Friedman, *The Machinery of Freedom*.

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passive law enforcement, would ward off the bad guys. This deterrence effect could be amplified by arranging for the contract to be public knowledge, much as the owner of a car places prominently notice of an effective car alarm.

PRIVATIZATION AND CORRUPTION

It is widely held that private firms, organized for the enforcement of law within the parameters implied by profit-making, would be susceptible to bribery and corruption. The argument is roughly as follows: private protection agencies are motivated by the lure of profits; it would pay them, therefore, to engage in thuggery, or to protect others who do so.

There is manifest in this argument a fundamental failure to comprehend the workings of a free market. For one thing, private protection agencies, as compared to the state, would be unable to exercise coercion in the pursuit of clientele. A private protection agency must convince potential clients that it is possessed of both the wherewithal and the resolve to provide effective enforcement of the law. Providing a guarantee to the customer is one manner of doing so. Therefore, it is likely, or in any case possible, that the protection agencies would woo clients by offering to *insure* their lives and property. Manifestly, the protection agency that underwrites its clients has a strong incentive to protect them vigorously—and a strong disincentive to countenance bribery and corruption. Crimes perpetrated against its clients then become crimes paid for by the agency, and only an agency bent on masochism would allow for its officers to indulge criminal conduct.

In fact, it is the public police force that stands to profit from look-the-other-way law enforcement. After all, arriving at its funding, as it does, from (coerced) tax revenues, the public police will not endure economic hardship if and when it fails to arrest the onslaught of crime. Therefore, it pays for its officers to accept bribes from the perpetrators of crime, offering in exchange clemency. This fact was given neon prominence in the *Knapp Commission Report on Police Corruption*, published in 1972, which found virtually every office in the entire NYPD to be corrupt.[10] Moreov-

[10]See *The Knapp Commission Report on Police Corruption* (New York: George Braziller, 1972), p. 3:

> Of course, not all policemen are corrupt. If we are to exclude such petty infractions as free meals, an appreciable number do not engage in any corrupt activities. Yet, with extremely rare exceptions, even those who themselves engage in no corrupt activities are involved in corruption in the sense that they take no steps to prevent what they know or suspect to be going on around them.

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er, if indeed criminal activity grows while the public is being "protected" by an unconcerned public police, it is very likely that the police budget will increase as well. Crime, after all, can pay. Which is not so much *why* the government runs the police as *because* the government runs the police.

THE HUBRIS OF CENTRAL CONTROL

The officials of the state, possessed of but fragmented knowledge, nevertheless presume to determine by fiat the necessary degree of police protection for the entire citizenry. It is axiomatic that such charlatanry will lead to the inefficient use of scarce resources. The state cannot succeed because it squelches that vital power—human freedom—but for want of which the machinery of society might work more justly.

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In Memory of Ken Mackintosh

I first heard the name Ken Mackintosh in the early fall of 1998 when Hans Hoppe asked me if I had ever heard of him. I said I hadn't and Hans, with something of the air of putting one over on me, said that Ken was a sociologist deeply interested in Austrian economics and libertarian political theory who lives in Conway, Arkansas, a small town of about 40,000 which has been my home for about a year and a half, and that he had submitted articles to the *Quarterly Journal of Austrian Economics* and to the *Journal of Libertarian Studies*, periodicals for which both Hans an I serve as co-editors.

This, I confess, knocked me for a bit of a loop. Not only is it rare to run across a scholar with an appreciation for Austrianism and libertarianism in Arkansas, but to find one who was also a sociologist, of all things, is truly exceptional, even amazing.

Needless to say, I telephoned Ken right away, and he agreed to have lunch with me. Frankly, I thought Hans was pulling my leg; he was not. Ken was everything Hans said he would be, and more. I found Ken to be knowledgeable about all sorts of obscure Austrian economists and libertarian theorists with whom I was acquainted, as well as free-market oriented sociologists, of whom I was ignorant (to tell the truth, I thought the very concept of a modern sociologist such as Ken who favored economic freedom to be a veritable contradiction in terms.)

We must have had lunch together a half dozen times or so. In addition, Ken attended a lecture I gave at the University of Central Arkansas's Honors College on libertarianism, which served as a further impetus for our discussions. It was a pleasure to begin to get to know him in this way.

I learned later that Ken was denied tenure at UCA to a large degree because he didn't publish. And I can readily understand why. According to Ken's wife Rita Rose, "there were very few sociological journals interested in his work; he really had no publication outlets at the time."

Well, that may have been true half a decade ago, but in the last few years Ken was a very prolific author. His article "Sociology as Anti-Economics" has just been accepted for publication in the *Quarterly Journal of Austrian Economics*, and you see before you his "Sociological Theory in the Shadow of Durkheim's Revolt Against Economics," in the *Journal of Libertarian Studies*. In

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addition, Rita Rose informs me that he has had another article accepted for publication, and has submitted several more, all in the last little while.

His untimely passing at the age of 62 means that the world, at least our little bit of it, will miss a strong voice for liberty, intellectual sanity and freedom, and from a very unlikely disciplinary (and therefore even more precious) source. For me, personally, Ken was a witty man, with a great sense of humor, and much empathy. We were fast becoming friends, and I shall greatly miss him.

– Walter Block

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SOCIOLOGICAL THEORY IN THE SHADOW OF DURKHEIM'S REVOLT AGAINST ECONOMICS

Kenneth H. Mackintosh*

Having observed that analysis in the cultural sciences develops only through "special and 'one-sided' viewpoints," Max Weber concluded that "knowledge of the universal . . . is never valuable in itself."[1] And thus, however firmly the descriptive research which Weber encouraged, and to which he so amply contributed, may have established a disciplinary claim for sociology, it cannot be surprising that its standing as a theoretical science remains open to question.[2] In one of the ironies of modern scholarship, Weber is presented to sociology students, in the company of Durkheim and Marx, as preeminent among those who established a firm theoretical foundation for the discipline.[3] But for the addition of Marx to his very short list, Parsons's[4] *coup de theatre* still finds its resonance in sociological theory.

Over the span of one hundred and fifty years, dissatisfaction with one or more of the fundamental postulates of theoretical economics has given impetus to the development of new "theoretical" sciences. Depending upon one's viewpoint, scientific socialism, sociology, institutional economics, and so on may represent several such attempts, or they may represent a single multifaceted effort. Whichever the case, the order of procedure in such undertakings is straightforward. The invention of a new theoretical social science can be accomplished by rejecting or otherwise vacating one of the basic postulates of theoretical economics. The starting point may be circumstantial, but if the task is carried forward with any attention to logical consistency, it will lead necessarily to the rejection of every postulate.

A successful effort promises to ground a new science and reduce economics to the status of *special case* —with a single thrust. The

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[1]Max Weber, *The Methodology of the Social Sciences*, Edward A. Shils and H.A. Finch, trans. (New York: Free Press, 1949), pp. 72 and 80.

[2]See F.A. Hayek, *The Political Order of a Free People*, vol 3, *Law, Legislation and Liberty* (Chicago: University of Chicago Press, 1979), p. 173.

[3]The ideal-typical approach outlined by Weber does not constitute a unique theoretical ground for sociology. See Ludwig von Mises, *Epistemological Problems of Economics* (New York: New York University Press, 1976), pp. 72–107.

[4]Talcott Parsons, *The Structure of Social Action* (New York: McGraw-Hill, 1937).

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following will outline such an attempt rather narrowly with respect to the methodology of "Durkheimian" sociology, proceeding thence to a discussion of the paralyzing influence it continues to wield in a discipline which has seldom bothered to question its theoretical foundations.

THREE ECONOMIC POSTULATES

To a large extent, the rigor and parsimony of economic theory is a product of investigations of successive "proposals for the improvement . . . of the existing system."[5] The exchange initiated by Mises's assertion[6] that central planning could not work[7] can be described as an argument over the main postulate of the theory of dynamics. It can be noted reciprocally that the dispute itself was integral to the clear emergence of the postulate.

Mises's defenders focused attention on the meaning of what Hayek later referred to as "such pleonastic expressions as 'given

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[5]F.A. Hayek, *The Fatal Conceit*, vol. 1, *The Collected Works of F.A. Hayek*, W. W. Bartley, III, ed. (Chicago: University of Chicago Press, 1988), p. 19.

[6]Ludwig von Mises, "Economic Calculation in the Socialist Commonwealth," chapter 3 in *Collectivist Economic Planning*, F.A. Hayek, ed. (London: George Routledge and Sons, [1920] 1935).

[7]Near simultaneous publications by Max Weber, *Economy and Society*, Guenther Roth and Claus Wittich, eds., Ephraim Fischoff, trans. (New York: Bedminster Press, [1921] 1968), pp. 100–18, and Boris Brutzkus, *Economic Planning in Soviet Russia*, G. Gardiner, trans. (London: George Routledge and Sons, [1920] 1935) entitle these scholars to be listed with Mises as initiators of the debate which unfolded over the following quarter century. Major contributors to the rejoinder included Fred Taylor, "The Guidance of Production in a Socialist State," *American Economic Review* 19, no. 1 (1929): 1–8; Willet Roper, Jr., *The Problem of Pricing in a Socialist State* (Cambridge, Mass.: Harvard University Press, 1931); Henry Dickinson, "Price Formation in a Socialist Community," *Economic Journal* 43 (June 1933): 237–50; Henry Dickinson, *Economics of Socialism* (Oxford: Oxford University Press, 1939); Oskar Lange, "Marxian Economics and Modern Economics," *Review of Economic Studies* 2, no. 2 (1934): 189–201; Oscar Lange, "On the Economic Theory of Socialism," in *On the Economic Theory of Socialism*, Benjamin E. Lippincott, ed. (Minneapolis: University of Minnesota Press, [1936] 1939), pp. 55–143; Abba Lerner, "Economic Theory and Socialist Economy," *Review of Economic Studies* 1, no. 1 (1934): 157–75; Abba Lerner, "Statics and Dynamics in Socialist Economics," *Economic Journal* 47, no. 2 (1937): 253–70; Abba Lerner, *The Economics of Control* (New York: Macmillan, 1944); and A. C. Pigou, *Socialism versus Capitalism* (London: Macmillan, 1937). The Mises position was defended and further developed primarily by F.A. Hayek, "The Nature of the Problem" and "The Present State of the Debate," chapters 1 and 5, respectively, in *Collectivist Economic Planning*, F.A. Hayek, ed. (London: George Routledge and Sons, 1935); F.A. Hayek, "The Competitive Solution," *Economica* 7 (May 1940): 125–49. Ample support was given by Lionel Robbins, *The Great Depression* (New York: Macmillan, 1934); and Lionel Robbins, *An Essay on the Nature and Significance of Economic Science*, 2nd ed. (New York: New York University Press, [1932] 1984).

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data'."[8] Through the debate, it became apparent that the data needed to describe the equilibrium positions of large economies were "given" only by assumption in the theoretician's model. Examination of the actual processes of production and distribution revealed these data to be neither collectible nor even fully determined, except in a manner which could prove useful to economic historians.[9]

Robbins's[10] elegant statement of the "simple and indisputable facts of experience" having to do with the scarcity of goods and services—the main postulates of theoretical economics—is deceptive in its simplicity.[11] People can and do order their preferences (the main postulate of the theory of value); there are several productive factors (the main postulate of the theory of statics); and future scarcities are not strictly knowable (the main postulate of the theory of dynamics). The debate on socialist planning started as a controversy over the last of these, and inevitably spread to include all three.

THE THEORY OF VALUE

It can be shown that attempts to establish a unique theoretical basis for sociology will encompass all of the economic assumptions. Of the three, however, the theory of value may offer the greatest purchase for such an endeavor. Durkheim considered the theory of value to be "the most fundamental of all economic theories," and was sharply contemptuous of the subjective reformulation which had revolutionized economics after 1871. He scolded the "Orthodox School," urging the abandonment of its deductive approach in favor of the discredited *realistic* method of cost.

> If value had been studied as any fact of reality ought to be studied, the economist would indicate, first of all, by what characteristics one might recognize the thing so

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[8]F.A. Hayek, *Individualism and Economic Order* (Chicago: University of Chicago Press, [1948] 1969), p. 39; and F.A. Hayek, *Hayek on Hayek*, Stephen Kresge and Leif Wenar, eds. (Chicago: University of Chicago Press, 1994), p. 147.

[9]See Don Lavoie, *Rivalry and Central Planning* (New York: Cambridge University Press, 1985).

[10]Robbins, *Nature and Significance*, pp. 78–79.

[11]The fuller implications of Robbins's statement, as a contribution to what James Buchanan, in *Cost and Choice* (Chicago: University of Chicago Press, 1969), has called the London Theory have taken years to develop. They remain controversial in economics and generally ignored in sociology. It should be noted that Rothbard's axiomatic statement is more parsimonious than Robbins's, but the Robbins treatment lends itself more readily to the present undertaking. See Murray N. Rothbard, *Man, Economy, and State* (Los Angeles: Nash Publishing, 1962), pp. xi ff.

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> designated, then classify its varieties, investigate by methodical inductions what the causes of its variations are, and finally compare these various results in order to abstract a general formula.[12]

This is an accurate description of what economists had vainly attempted prior to the emergence of the subjective theory. As Robbins noted some forty years later in reference to the Historical and Institutional Schools, "not one single 'law' deserving of the name, not one quantitative generalisation of permanent validity" had emerged from these efforts over the course of a century.[13]

Durkheim's attack was not gratuitous. In retrospect, it was said that the subjective theory transformed the subject matter of theoretical economics from the fundamentally social and collective to the "reflex of individual choice."[14] Durkheim had a clear grasp of the task he was undertaking. He understood that his theoretical aspirations for sociology were grounded on value as objective *thing*—as *social fact*.[15] Hence his assaults on the first postulate were persistent and multifaceted.

He certainly did not attempt to ignore the *atomistic* conceptions[16] which emerged from the shift to subjective theory. "Where purpose reigns," he argued, "there reigns also a more or less wide

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[12]E. Durkheim, *The Rules of Sociological Method*, Edward George Catlin, ed., Sarah A. Solovay and John Henry Mueller, trans. (New York: Free Press, [1895] 1966), p. 25.

[13]Robbins, *Nature and Significance*, p. 114.

[14]Robbins, *Nature and Significance*, p. 69, n. 2. Robbins's great oversimplification in referring to action as a "reflex" drew instant criticism, and was satisfactorily resolved by means of a thorough-going discussion. See, for example T. Parsons, "Some Reflections on *The Nature and Significance of Economics*," *Quarterly Journal of Economics* 48, no. 3 (1934): 511–45; Ludwig von Mises, *Human Action* (New Haven, Conn.: Yale University Press, 1949), particularly pp. 94–126; and Israel Kirzner, *The Economic Point of View* (New York: D. van Nostrand, 1960), pp. 146–85.

[15]There is some confusion over the paradigmatic category in which Durkheim properly belongs; was he a *positivist* or an *idealist*? At a critical juncture, Talcott Parsons, in *Structure of Social Action*, p. 445, accused Durkheim of having overshot his positivist mark to go "clean over to idealism." This view is shared by the outspoken materialist Marvin Harris, *The Rise of Anthropological Theory* (New York: Thomas Y. Crowell, 1968), pp. 471–82, and by many others. The interpretation of Durkheim as a consistent positivist, which is the viewpoint here, requires only that we take him at his word. He left no doubt that social phenomena (without exception) must be studied "objectively" (*Rules of Sociological Method*, Solovay and Mueller, trans., p. 28), or "from the outside," (*Rules of Sociological Method*, S. Lukes, ed., W. D. Hall, trans. [New York: Free Press, [1895] 1982, p. 70], "as external things" (both translations). His perspective may have proved unpalatable, but the alternative, on any criterion of logical consistency, amounted to eschewal of the method of positive science.

[16]Carl Menger, *Investigations into the Method of the Social Sciences*, Louis Schneider, ed., Francis J. Nock, trans. (New York: New York University Press, [1883] 1985), pp. 90–94.

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contingency; for there are no ends, and even fewer means, which necessarily control all men, even when it is assumed that they are placed in the same circumstances."[17] As was so often the case with Durkheim, he stood here on the brink of overshooting his mark and going clean over to cybernetics. Instead, he fell back hard onto the presupposition that "purpose" cannot reign. If it were true, he continued, "that historic development took place in terms of ends clearly or obscurely felt, social facts should present the most infinite diversity; and all comparisons should be almost impossible."

Durkheim's conclusion, which Parsons embraced as "the problem of order,"[18] leapt right across what Menger considered "the question of importance" for the social sciences.[19] As Hayek eventually put it, the important task is to demonstrate that "the spontaneous actions of individuals will, under conditions which we can define, bring about a distribution of resources which can be understood *as if* it were made according to a single plan, although nobody has planned it."[20] Here was a solution, he said, "to the problem which has sometimes been metaphorically described as that of the 'social mind'."[21]

In his apparent haste to discover another varietal "social mind," Durkheim drew a pat conclusion where he should have put an important question. The "wide diffusion of collective forms,"[22] he argued, which is characteristic of human society is explained in terms of corporative constraints on "excited appetites" which tend "to exceed all limits."[23] "The rules of occupational morality and justice . . . force the individual to act in view of ends which are not strictly his own, to make concessions, to consent to compromises, to take into account interests higher than his own."[24]

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[17]Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 94.
[18]Parsons, *Structure of Social Action*, pp. 89–102.
[19]Menger, *Investigations*, pp. 139–59 and 193–96.
[20]Hayek, *Individualism and Economic Order*, p. 54, emphasis added.
[21]Mises's disdain for a *social* or *group mind* is well known. He equated it to the *Volkgeist* doctrine "devised in Germany as a conscious reaction against the ideas of natural law and the 'un-German' spirit of the French Revolution." In the course of an exposition of the ontological deficiencies of the concept, he noted that "Émile Durkheim and his school deal with the group mind as if it were a real phenomenon, a distinct agency, thinking and acting." See Ludwig von Mises, *Theory and History* (New Rochelle, N.Y.: Arlington House, 1957), pp. 190–91, also pp. 240–63.
[22]Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 92.
[23]E. Durkheim, *Suicide*, George Simpson, ed., John A. Spaulding and George Simpson, trans. (Glencoe, Ill.: Free Press [1897] 1951), p. 383.
[24]E. Durkheim, *The Division of Labor in Society*, George Simpson, trans. (Glencoe, Ill.: Free Press, [1893] 1960), p. 227.

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Durkheim rejected the purest forms of *constructivistic*[25] interpretation, criticizing such thinkers as Hobbes and Rousseau for failing to realize "how contradictory it is to admit that the individual is himself the author of a machine which has for its essential role his domination and constraint."[26] But having come that close to grasping the central idea of evolutionary development, he set upon "the philosophers of natural law, the economists, and, more recently, Spencer," for asserting that "we have only to leave individual forces to develop freely and they will tend to organize themselves socially."[27] His own sociology, founded as he claimed "on reason and truth," had no need of the essential evolutionary mechanism of selection, and thus landed him back in the *constructivistic* camp. He insisted that complex societies can be developed and maintained on the basis of "a rational plan of reflective intelligence . . . according to a rigidly drawn program."[28]

The immediate reference for Durkheim in matters of appetitive constraint was the corporate group, which he said "would have all necessary authority to demand indispensable sacrifices and concessions and impose order upon [its members]." And though he was quite certain that the State was not suited to perform this function immediately, he nonetheless assigned it critical controlling and coordinating functions which would grow in importance as the complexity of the division of labor increased.[29] "There is, above all, an organ upon which we are tending to depend more and more; this is the State. The points at which we are in contact with it multiply as do the occasions when it is entrusted with the duty of reminding us of the sentiment of common solidarity."[30]

With flawless consistency, Durkheim's distinction between private and public law was purely conventional.

> [W]e believe that all law is public, because all law is social. All the functions of society are social, as all the functions of the organism are organic. Economic functions have the same character as the others. Moreover, even among the most diffuse, there are none which are

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[25]F.A. Hayek, *Rules and Order*, vol. 1, *Law, Legislation and Liberty* (Chicago: University of Chicago Press, 1973), p. xii.

[26]Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 122; see also Durkheim, *Division of Labor*, pp. 201–2.

[27]Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., pp. 122–23.

[28]Durkheim, *Division of Labor*, p. 202.

[29]Durkheim, *Suicide*, pp. 383–89.

[30]Durkheim, *Division of Labor*, p. 202.

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> not, in greater or lesser degree, under the supervision of action by governmental bodies.[31]

Durkheim understood, perhaps more clearly than most of the economists of his day, that social systems cannot be expected to achieve equilibrium. His objective value theory requires that prices be interpreted as mere market phenomena. That is, prices are seen as oscillating with respect to their *objective* values. It follows from this that the momentary prices of labor and capital will be either too high or too low in any system which is not in a state of full competitive equilibrium. He thus concluded, not unreasonably given his theoretical perspective, that such discrepancies would amount to injustices, would thereby be *unsocial*, and could not be tolerated by society.[32] The "minute regulation of contract" demanded by Durkheim was to insure that contracts be instruments of "reason and truth."

For a third time, Durkheim flirted with a modern conception of the self-organizing system when he noted a necessity "that the collective conscience leave open a part of the individual conscience in order that special functions may be established there, functions which it cannot regulate."[33]

> As regulated as a function may be, there is a large place always left for personal initiative. A great many of the obligations thus sanctioned have their origin in a choice of the will. It is we who choose our professions, and even some of our domestic functions. Of course, once our resolution has ceased to be internal and has been externally translated by social consequences, we are tied down.[34]

Given the continuity of societies, it is not easy to see how Durkheim could allow for these exercises of the will, in general, or even for the young and unencumbered. He dismissed the market unequivocally as illegitimate in the allocation of productive factors. And save in the case of some exceptional and probably catastrophic transition (i.e., Western European societies, *circa* 1895, for which Durkheim was seeking a permanent order), he could expect that individuals would be born into existing systems of obligations.

A "Durkheimian" society would confront a continuous need to replace productive factors (including labor) in fixed and determi-

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[31]Durkheim, *Division of Labor*, p. 127.
[32]Durkheim, *Division of Labor*, p. 216.
[33]Durkheim, *Division of Labor*, p. 131.
[34]Durkheim, *Division of Labor*, pp. 228–29.

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nate proportions. A draft on labor might not be necessary, so long as the voluntary choices of individuals conformed to societal requirements. But the central argument of Durkheim's whole theoretical discourse was to rule out the importance or even the possibility of such coincidences. However clearly Durkheim may have momentarily grasped the necessity for choice, it really had no place in his theory. Any serious attempt to give it place would have run afoul of his contention that the more articulated the structure, the greater its "resistance to all modification."[35] Having dispensed with the main postulate of the subjective theory of value, Durkheim could contemplate a society in which the future would certainly be knowable, and in which the selection of means could be reduced to a process of technical judgments. This much is insured by the logical consistency of the postulates themselves.

THE ILLUSION OF EMPOWERING THEORY

The subjective reference which reoriented the science of economics in the closing years of the nineteenth century "exploded the fallacies of every brand of utopianism."[36] Those who longed to establish, or at the least to witness, the hegemony of one or another *rational order* over the seeming chaos of citizens become consumers held fast to the chimera of objective measurement as the *sine qua non* of their grandiose designs. If utility were objective like coal or potatoes, it would be possible, at least in some hypothetical sense, for an intrusive government to engross the supply and its sources for distribution and production according to some formula of its own creation. Theory which would allow such straightforward manipulations would indeed be *empowering theory*.

For those remaining in what might be called the classical mainstream, quantification of *value* or its successor *utility*, could be accomplished through measurements taken in *normal* (*i.e.*, fully equilibrated) social systems.[37] Durkheim's problem, how-

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[35]Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 70.

[36]Ludwig von Mises, *The Ultimate Foundations of Economic Science* (Princeton, N.J.: D. van Nostrand, 1962), p. 3.

[37]Karl Marx, *Capital*, vol. 1, Fredrich Engels, ed., Samuel Moore and Edward Aveling, trans. (New York: International Publishers [1867] 1967), p. 159. However useful the theoretical concept of social systems in competitive equilibrium, such entities cannot be found in the empirical realm. The emphasis placed here on Durkheim should not obscure the fact that many sociological theorists persist in the traditions of the classical mainstream. Under headings such as *rational action* or *rational choice* they continue to devise interpersonal utility comparisons; for ex-

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ever, was of a more fundamental nature. Having rejected equilibrium analysis, he was required to find some vantage point external to the social system from which objectivity and hence some new derivative of an empowering theory could be established. He found it, of course, in a collective conscience considered as *sui generis*, which is to say, as *positive*. Durkheim's *theory*, if we may call it that, was predicated on assumptions, or "fancies," as Mises called them, which he mistook for *objective facts*. His self-conscious employment of the methods of the natural sciences required a theoretical edifice raised on empirical foundations. In his determination to build a sociology on the basis of what he could see, he failed to notice that what is *seen* in the social sciences must be "built upon what is thought."[38] This clear distinction between the natural and social sciences has proved especially recondite to sociologists. Those who have openly challenged or accepted it[39] have stood on the fringes while the center was maintained by theoreticians and researchers whose ambivalence allowed the simultaneous exploitation of both expedients.

If the assumptions of the positive scientist are made to "save appearances," as it has been said, the tests of these assumptions will be wholly empirical. The major practical problem in implementing such seemingly straightforward procedures has always been the difficulty of finding and stating an exhaustive list of assumptions. In the struggle against his own presuppositions, Keynes remarked that "The difficulty lies, not in the new ideas, but in escaping from the old ones, which ramify into every corner

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ample, James Samuel Coleman, *Foundations of Social Theory* (Cambridge, Mass.: Belknap Press, 1990), p. 773, to conceptualize individuals as Kalman filters who react to on-line signals; for example, Harrison C. White, *Identity and Control* (Princeton, N.J.: Princeton University Press, 1992), p. 348, to ignore the consumer as a matter of theoretical principle; see M. Granovetter, "Toward a Sociological Theory of Income Differences," in *Sociological Perspective on Labor Markets*, Ivar Berg, ed. (New York: Academic Press, 1981), pp 11–47, and esp. pp. 18–19.

[38]G.L.S. Shackle, *Epistemics and Economics* (Cambridge: Cambridge University Press, 1972), p. 66. Shackle's assertion was made in contrast to the natural sciences, in which he said "what is thought is built upon what is seen." Durkheim's blindness to this distinction became manifest where he insisted that the advance of science itself could reveal the error, if such it were, of his objective treatment of social facts (Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 28). Insofar as the glaring empirical inadequacies of the labor theory of value (replete with its epicyclic allusions to *factors of normal quality, socially necessary labor embodiments, etc.*) were insufficient to capture Durkheim's attention, it is hard to imagine what future difficulties might have bestirred the man and his followers.

[39]Respectively, for example, George Andrew Lundberg, *Foundations of Sociology* (New York: Macmillan, 1939); and Herbert Blumer, *Symbolic Interactionism* (Englewood Cliffs, N.J.: Prentice-Hall, 1969).

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of our minds."[40] Durkheim's *sensational trick*, if you will, was to present a hugely multifaceted and complex melange of vaguely specified assumptions as *social facts*, which is to say, as established empirical generalizations. At a stroke, he placed his assumptions out of reach. His *modus operandi* gave further dimension to the urge toward *empowering theory*. Durkheimian theory is empowering not only in the sense of heralding societal manipulations on any scale whatever, but also in its insulation from scrutiny. Such "theory" equips the observer with knowledge for which there is no accounting.[41]

AMERICAN INTERREGNUM

Near the end of the 19th century, the legacy of priestly omnipotence originally promised to sociology by August Comte and later vouchsafed by Durkheim proved an embarrassment, most notably in the United States, to the sociologists who struggled for respectability and an autonomous seat at the academic table. The claim for sociology as the inclusive science of society, associated with such individuals as Comte and the "American Aristotle" L. F. Ward, was effectively submerged in favor of the more modest ambitions either to construct the new discipline as a synthesizer of all the social sciences which could nonetheless lay claim to a unique sociological subject matter; or to stake out its province as fundamental to all of the social sciences. Chief among the advocates for these two incarnations, respectively, were the University of Chicago's Albion Small and Franklyn Giddings of Columbia University.

Small found a unique subject matter, untreated by the other social sciences, in the emerging "public opinion" of advanced societies. Sociologists, according to Small, merely try "to perfect means of answering obtrusive questions about society which the ordinary man is proposing every hour."[42] Claim to a synthesizing function for sociologists rested on his assertion "that the phase of social activity to which they give chief attention can be correct-

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[40]John Maynard Keynes, *The General Theory of Employment, Interest, and Money* (New York: Harcourt, Brace, [1953] 1964), p. viii.

[41]Durkheim dismissed the notion that introspections could provide any theoretical basis whatever, referring to them as mere "conjectures that are the product of pure intellect" (Durkheim, *Rules of Sociological Method*, Solovay and Mueller, trans., p. 24), or as merely possible realities which are "pure conceptions of the mind" (Durkheim, *Rules of Sociological Method*, Hall, trans., p. 67). As per note 15, above, it can be said that Durkheimian theory was based solely on the pure conceptions of his own mind—but the still resonating core of his writings is a polemical denial of this very charge.

[42]A. Small, "The Era of Sociology," *American Journal of Sociology* 1, no. 1 (1895): 6.

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ly estimated only when viewed as a part of all the rest of life."[43] He went to great lengths, however, to assure his academic colleagues that sociology embraced no agenda to discredit or supersede the science of economics. He cast sociology and economics as interdependent portions of a larger social science. The assumption, he said,

> that there is special call for arbitration and conciliation between economics and sociology rests primarily upon the failure to perceive that the economic element in human actions may be explained without throwing light upon other equally significant social factors.[44]

Franklyn Giddings, in the course of his own efforts to promote the new discipline as the *basic* social science, became involved in a spirited debate with Simon Patten, who sought the same distinction for economics. Giddings argued that sociology was "not the sum of social sciences, but the groundwork, in which they find a common basis."[45] He was apparently willing to pay a rather large price in defense of his position, going so far as to characterize political economy, jurisprudence, and politics as "complementary parts of that detailed study of society in its advanced evolution, *upon which sociology does not enter.*"[46]

Patten was unwilling to accept this claim, but offered to sociology in its stead the strikingly Misean province of a "subjective environment" which could be explored as the solitary source of "mobility, equality and freedom" in human society.[47] For his own part, Giddings appeared unmoved. Additionally, neither Patten, Small, nor any of the major protagonists in this debate seemed in the least affected by each other's remarks. As the debate meandered, academic sociology in the United States gained impetus, thriving as it were, without consensus as to province or basis. Over time, the contradictions and gaps might have been made good but for a strong propensity, already evi-

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[43]A. Small, "What is a Sociologist?" *American Journal of Sociology* 8, no. 4 (1903): 473.

[44]A. Small, "The Relation of Sociology to Economics," *Publications of the American Economic Association* 10, Supplement (1895): 106.

[45]F.H. Giddings, "The Relation of Sociology to Other Scientific Studies," *Journal of Social Science* 32, no. 2 (1894): 18.

[46]Giddings, "The Relation of Sociology," p. 32, emphasis added.

[47]S.N. Patten, "The Organic Concept of Society," *Annals of the American Academy of Political and Social Science* 5, no. 6 (1894): 405–6. It may be recalled that prior to the 1930s, Mises had reserved the term *sociology* "to signify the general theoretical science of human action." See Mises, *Epistemological Problems of Economics*, p. xvi. In light of the *praxeology* which was to follow, Patten's "Theory of Social Forces," *Annals of the American Academy of Political and Social Science* 7, Supplement (1896), becomes emanately intelligible.

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dent, simply to ignore their existence. In his report on the Sociological Conference held in 1894 for the express purpose of airing the differences between sociologists and other interested parties, H. H. Powers concluded that the prevailing contested views of sociology, as synthesizing, fundamental, or even as inclusive, were, "at bottom identical."[48]

This remarkable *tour de force* was undoubtedly effective academic politics, but it was counterproductive in the measure to which it elevated the *sheer will to found a discipline* over the most ordinary logical constraints. Powers and his colleagues are not to blame for the intellectual promiscuity which was later tolerated, if not actively promoted in sociology, but they certainly established no ground upon which it might have been more easily restrained. By the nineteen-thirties, when Durkheim's major writings began to attract the attention of a handful of American sociologists,[49] sociology was already an eclecticism.

DURKHEIM'S SHADOW

The following is not a criticism of allowing scope to more than a single paradigm in sociology or any other social science. If one is willing to sacrifice *meaning*, in the sense intended by Weber[50] and elaborated by Mises,[51] it will always be possible to proceed inductively, even as Durkheim recommended.[52] Analysis of static systems, from Léon Walras[53] to Vilfredo Pareto,[54] and the construction of self-contained, dynamic models from Knut Wicksell[55] through the present day have afforded insights into the connectedness of social systems which might never have been grasped by other means.[56]

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[48]H.H. Powers, "Terminology and the Sociological Conference," *Annals of the American Academy of Political and Social Science* 5, No. 6 (1895): 706.

[49]Most notably George Simpson whose English translation of *The Division of Labor* was published in 1933, Talcott Parsons who incorporated the elements of Durkheimian thought into his own emerging theory, and Harry Alpert, *Emile Durkheim and His Sociology* (New York: Columbia University Press, 1939), who communicated Durkheimian concepts to a rising generation of American sociologists who were to wield great influence throughout the post-war expansion of the discipline.

[50]Weber, *The Methodology of the Social Sciences*, pp. 72–80.

[51]Mises, *Epistemological Problems of Economics*, pp. 1–67.

[52]We must assume, of course, that positive models will be specified in terms which are indisputably objective, *e.g.*, sex ratios, mortality rates, average hourly wages, etc.

[53]Léon Walras, *Wealth, Definitive Edition* (Lausanne, Switz.: L. Corbaz, [1874] 1926).

[54]Vilfredo Pareto, *Manuel D'Économie Politique* (reprint of French ed., New York: AMS Press, [1909] 1969).

[55]Knut Wicksell, *Interest and Prices*, R.F. Kahn, trans. (London: Macmillan, 1936).

[56]G.L.S. Shackle, *The Years of High Theory* (Cambridge: Cambridge University Press, 1967), pp. 96–97.

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Such models present no logical problem so long as it is remembered that they contain no reference to action and its agents. In glossing this distinction, the social scientist must plead a special justification. Shackle correctly identified such undertakings as putative contributions to social philosophy. As he said, "There can be no *logical* combining of models; but within the mind of the social philosopher there can be a nonlogical blending of the light which these models throw."[57] Sociology has produced some number of exceptional individuals to whom this license might fairly be accorded. Talcott Parsons and Harrison White, to name only two, may have succeeded in erecting conceptual structures of such erudition and scope as to serve as a context of insight for their respective generations. One could include other names, to be sure, but no list can completely obscure the realization that social philosophy, whatever its immediate or ultimate values, has been routinely mistaken for a sociological theory which has thus never quite become conspicuous through its absence. The following criticism will be confined to an ingrained habit of nonlogical model mixing which serves to shield the corpus of Durkheimian thought from the careful scrutiny it deserves.[58]

The main outline along with some of the detail of the Durkheimian shadow was revealed in the past decade with unaccustomed candor in a major work from Stanley Lieberson.[59] From a vantage point which would carry him to the Presidency of the American Sociological Association within a few years, he was well positioned to provide theoretical justifications for research practices which had already been widely adopted by sociologists over the preceding quarter century or so. The evolving practice and its related theory consists in treating the unexplained variance of regression analyses as *explained* by some factor or factors which remain unmeasured in the model and can only be grasped through implicit theoretical allusion. Lieberson refers to these factors as "causal principles" the most important of which, he says, should be few in number[60] and proof against reduction to the terms of the natural, biological, or other social sciences.

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[57]G.L.S. Shackle, *A Scheme of Economic Theory* (Cambridge: Cambridge University Press, 1965), pp. 195–96.

[58]The most conspicuous example from Durkheim can be found in his analysis of "anomic" suicide. His model required that it be a contextual effect due to a weakening of the collective conscience, but his empirical analysis relied heavily on individual effects proxied by religious affiliation, profession, sex, marital status, etc. Logically mixed models, in general, both deny and affirm the category of action. In some non-logical fashion, these models are used to recover meaning from the essentially meaningless.

[59]Stanley Lieberson, *Making it Count* (Berkeley: University of California Press, 1985).

[60]Lieberson, *Making it Count*, pp. 186–89.

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Unlike many of his colleagues, Lieberson holds that some portion of the *explained* variance as well may be imputed to causal principles. His suspicion of correlation as a valid tool of scientific discovery is well founded. He is acutely aware of the pitfalls inherent in the large interaction terms which often appear in sociological research, and would agree with Machlup that "Statistical proofs are never of any value." He would also agree with Machlup's further observation that even statistical disproofs are seldom useful "unless they can be rationalized by theoretical analysis of the causal relationships."[61]

In rejecting statistical proofs, Lieberson is left with a choice between the "Austrian" *a priorism* of Mises and the positivism of Emile Durkheim. Superficially at least, he opts for the *a priori* in affirming the primacy of theory over data. As he says, "data can help us decide only if a given theory is operating in the observed context."[62] Gresham's Law is said to be a *hardy proposition*, given its rare contradiction "at least in the contexts that have been observed." He explains that a hardy proposition "generates a certain consequence regardless of the degree to which the setting may favor other and possibly conflicting principles."[63]

At the risk of overtaxing the reader, it will be recalled that for Weber "the generalization called Gresham's Law" was not a Law, but rather "a rationally clear interpretation of human action under certain conditions and under the assumption that it will follow a purely rational course."[64] Mises, who could not have disagreed more strongly with Weber on this point, considered it a sociological proposition which expresses "that which necessarily must always happen as far as the conditions [it assumes] . . . are given."[65] Lieberson followed Weber in summarizing Gresham's Law as an instance of "bad money driving out good money," whereas Mises went to the heart of the matter, explain-

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[61]Fritz Machlup, *The Stock Market, Credit, and Capital Formation* (New York: Macmillan, 1940), p. 139.

[62]Lieberson, *Making it Count*, p. 195. Compare, for example, Murray N. Rothbard, *America's Great Depression* (Kansas City: Sheed and Ward, 1975), pp. 3–5; or Mises, *Epistemological Problems*, pp. 82–107.

[63]Lieberson, *Making it Count*, p. 198.

[64]Weber, *Economy and Society*, p. 10.

[65]Mises, *Epistemological Problems of Economics*, p. 91. In fairness to Weber, it should be noted that Mises was well aware that the laws which Weber denied were those of "historical development" then being promulgated by proponents of the German Historical School, and perhaps now as Lieberson's "Transformational Principles." Weber conceptualized sociology as "*universal history*," not as a social science "that aims at universally valid propositions." See Mises, *Epistemological Problems*, p. 106.

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ing that the essential element was "not the 'disappearance' of 'good' money, but the fact that payments that can be made with the same legal effect in 'good' or in 'bad' money, as suits the debtor," are made in bad money "in the mass of debtor–creditor relationships." Furthermore, as he said, debtors' partiality to bad money is no more than a generalization from experience, there being no theoretical reason to expect, let alone predict, that "rational actors" will always choose in the same manner.[66]

The foregoing tangle of detail may serve to illuminate Lieberson's genuine ambivalence as to the fundamental nature of the theory he espouses. He shares common ground with Weber, resorting often to the concept of an "ideal type," and yet purports to see a Law where the more logically consistent Weber could see none. He acknowledges the *a priori* but effectively eliminates its *praxeological* relevance by choosing causal principles which *act upon* variously defined aggregates instead of *through the action* of individuals. He likens these principles to "forces" which originate in "societal needs," "the ideology of the society," an "incentive structure" directed toward some population segment, "*and so forth.*"[67] Specifically, he posits a societal need "for a certain reward structure" which might be viewed as "a variant of the Davis - Moore theory."[68] Because Lieberson's illustrations are not predicated of individuals they necessarily appear *ad hoc* in the sense of being contrived to fit particular sets of events. The units of his analysis are categories which are often derived on the *polylogistic*[69] criteria so characteristic of Durkheimian thought. His stock illustration of a causal principle is the oppression of one race (gender, nationality, class, etc.) by another. He speaks easily of "the force generating lower black incomes,"

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[66]Mises, *Epistemological Problems of Economics*, pp. 86–87.

[67]Lieberson, *Making it Count*, p. 193, emphasis added.

[68]The "Davis–Moore" theory presumes the "functional necessity" of social stratification. The actor in this theoretical statement is society itself which is described as having "concerns" and "resources" which it allocates for the "purpose" of satisfying its "needs." K. Davis and W. E. Moore, "Some Principles of Stratification," *American Sociological Review* 10, no. 2 (1945): 242–49. Not once in their several pages do the authors make even the slightest concession to the *as if*. See Hans Vaihinger, *The Philosophy of As If*, C.K. Ogden, trans. (London: Routledge and Keegan Paul, [1935] 1968). The "functional necessities" to which they refer are those of the same organic unity that Durkheim described as "the highest form of the psychic life." See E. Durkheim, *The Elementary Forms of the Religious Life*, Joseph Ward Swain, trans. (Glencoe, Ill.: Free Press, [1915] 1954), p. 492.

[69]"Polylogism denies the uniformity of the logical structure of the human mind. Every social class, every nation, race, or period of history is equipped with a logic that differs from the logic of other classes, nations, races, or ages." Ludwig von Mises, *Theory and History* (New Rochelle, N.Y.: Arlington Press, 1957), p. 31.

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as an established *social fact*. At the other extreme he describes a force that will act if

> the population is atomized into a highly diverse set of interest groups that are neither fully harmonious with one another nor fully competitive and, if interest groups therefore differ not only in whether they are for or against an issue but also in the degree to which they benefit or lose.[70]

This focus on "forces," which can be stretched to encompass the most complex circumstantial arrays, stems directly from Lieberson's exclusion of the individual actor. The occasional failure of Gresham's Law, or any other "hardy proposition," is explained by the action of another "countervailing" force or forces. Observable macro consequences which emerge from the choices of individuals are interpreted as the empirical trace of forces which impel those very choices. Could a misplacement of the concreteness of human social systems be more perfect?[71] If we wanted a name for the set of causal principles, both known and unknown, we could scarcely improve on Durkheim's choice of *collective conscience*.

THE SHADOW IN CARICATURE

In contrast to the highly abstract reasoning and theoretical terms employed by Stanley Lieberson, Durkheimian influence finds freer expression in the empirical research of individuals who are apparently under no obligation to defend its tenets. In dozens if not hundreds of published and unpublished reports, the residuals of multiple regression analyses are directly tied to culturally visible forces manifested as the *isms* of race, ethnicity, sex, class, age, physical appearance, nationality, etc. The list is not infinite, but it can be infinitely extended.

Thanks to the speed of electronic data manipulation, the regression analysis can recreate Durkheim's polemical style with an efficiency which scarcely calls attention to itself. It was Durkheim's stock in trade to assemble a list which was purported to include all possible explanations of a phenomenon; reject each of these in turn on the basis of his own, often dated accounts of inadequacies;[72] and finally, to assault the reader with the de-

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[70]Lieberson, *Making it Count*, p. 198.

[71]Alfred North Whitehead, *Science and the Modern World* (New York: Macmillan, 1925), p. 75.

[72]The example which comes most readily to mind is Durkheim's treatment of the

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mand that his own untestable explanation be accepted.[73] In its present incarnation, the regression method has been perfected by means of a misspecified human capital theory, in terms of which education, health status, job-experience, etc.[74] are used in a rather disingenuous manner "to account for" differences in group experience.

The enormity of the theoretical problem was concisely outlined a number of years ago by Mark Granovetter, who pointed out to his follow sociologists that they routinely treat human capital as though it conformed to Say's Law—which is to say that it is capable of creating its own demand. As he said,

> It is naive to see productivity as a matter of individual skill and is, in fact, less theoretically sophisticated than the older neoclassical arguments on marginal productivity, which, whatever their shortcomings, at least recognized that wages are generated not only by skills but by skills in conjunction with consumer demand, technology, and a work position.[75]

He could have quoted Keynes, who had leveled the same charge nearly half a century earlier. While expressing doubt that his contemporaries would care to defend Say's Law, Keynes pointed out "that they were tacitly assuming it" when they ignored "the need for a theory of the supply and demand of output

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utilitarian position as pure hedonism (see Durkheim, *Division of Labor*, pp. 233–55). It is true that hedonism remained a strong element in economic writing circa 1893. "It is well known," as Robbins observed in *Nature and Significance*, p. 84, "that certain founders of the modern subjective theory of value did in fact claim the authority of the doctrines of psychological hedonism as sanction for their propositions." "Hedonistic postulates," (Hermann Heinrich Gossen, *The Laws of Human Relations and the Rules of Human Action Derived Therefrom*, Rudolf C. Blitz, trans. [Cambridge, Mass.: MIT Press, [1854] 1983]), "pleasure and pain," (William Stanley Jevons, *The Theory of Political Economy* [New York: Augustus M. Kelley, [1871] 1965]), and the conception of human beings as "pleasure machines" (Francis Ysidro Edgeworth, *Mathematical Psychics* [Mountain Center, Calif.: James A. Gordon, [1881] 1995]) were familiar contemporary concepts. Robbins's point, however, was that these ideas were even then giving way as economics and, more broadly, the social sciences, became more clearly differentiated from psychology and biology. Robbins, of course, emphasized the important contributions of the "Austrians" which commenced with Menger. Durkheim's critique of utilitarianism, in other words, looked backward rather than toward the theoretical ferment which animated many of his contemporaries.

[73]See Durkheim, *Division of Labor*, pp. 233–328; Durkheim, *Suicide*, pp. 57–151; and Durkheim, *Elementary Forms*, pp. 168–239.

[74]The lists of variables most commonly include health status, and time spent (in full-time employment, in the labor force since completing school, working for current employer, with current employer prior to current position, training in current position, in post-training experience, and in formal education).

[75]Granovetter, "Toward A Sociological Theory of Income Differences," pp. 18–19.

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as a whole."[76] Since Granovetter, the tacit assumption has gained in the strength that accrues from repetitive practice.

As a pure study in the history of ideas, the role of human capital theory in current sociological research is quite remarkable. On the one hand, researchers cast it into discredit, arguing that it is not capable of explaining the objective differences in group experience which have attracted their interests. At the same time, however, they rely on it as the source of their own conceptions of equality in opportunity and reward. The perfected world would yield a unit R^2 wherever the researcher turned. It is as if there were a collective conscience which dictated equal opportunities and reward for people who were objectively equal on a master list of human capital variables.

But even in this we are confronted with one more twist of decidedly Durkheimian ilk. The quality of objectivity which adheres to the theory is not really that some experience such as an additional year of formal education, or two more years of job experience *will* produce a given objectifiable increment of reward or opportunity. The *ethos,* rather, is that it *should* produce that result. Failure of the result to materialize creates a *moral affront,* as it were. No one has openly defended such a view, to be sure, but without it, the characteristic mode of analysis falls to the ground. In these analyses, the power of the *ism* is revealed by the proportion of the variance not explained by the human capital variables and whatever controls may have been provided.

With respect to sex, for example,[77] Wellington concludes that "human capital theory alone cannot explain the differences in men's and women's earnings."[78] The human capital variables in her data for white earners in 1985 netted an unexplained residual variance of fifty-eight percent. Though she moots the possible influences of several factors on the wage differential in addition to gender "discrimination," there remains an implicit suggestion that *fifty-eight percent* has some meaning outside the regression analysis itself, perhaps as a rough quantitative estimate of the

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[76]John Maynard Keynes, "The General Theory of Employment," *Quarterly Journal of Economics* 51, no. 2 (1937): 223.

[77]It is not the intention here to single out particular researchers for criticism. An extensive literature review at this point would be out of place. The exemplars used in the following represent the recent efforts of reputable sociologists who may expect to publish in the flagship journal of the American Sociological Association. Any doubts as to the currency of the methods described here are easily dismissed by a perusal of leading and other sociological journals.

[78]A.J. Wellington, "Accounting for the Male/Female Wage Gap Among Whites: 1976 and 1985," *American Sociological Review* 59, no. 6 (1994): 847.

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power of discrimination as a causal principle. Prior knowledge of the basic causes of a phenomenon, as suggested by Lieberson, "makes one aware of the need to work with causes that are not necessarily measured."[79] If discrimination were to enter into this research report, it could only be as a causal principle, because it was certainly no part of the regression model.

Race is even more transparently treated. It was recently asserted that differences in wages between white and black males due to "employer initiated racial discrimination" increased between 1976 and 1985 from nineteen to twenty-six percent.[80] This claim was based on the size and significance of a "race coefficient" generated against half a dozen human capital variables with controls for family status.[81] The conceptual errors supporting this claim were so egregious that the editor of the journal in which it appeared felt obliged to solicit and publish a critical commentary to accompany the article.[82] The caution itself may be revealing of the present state of sociological practice. With flaws that demanded immediate commentary, the article was accepted for publication by the editor and referees of a leading journal and placed in the lead position. In their accompanying comment, Farkas and Vicknair pointed out that any claim measured from a regression "depends crucially on which of the variables are controlled and which variables are omitted from the regression."[83] They effectively quashed the "race coefficient" with a simple control for cognitive skill and cautioned against accepting any claims of increasing racial discrimination.

CONCLUDING REMARKS

Durkheim's achievement can be located in the residues of a seemingly indelible impression that "sociological theory" is different from the theory of other social science disciplines. Rules of logic and evidence that might well apply outside its province are often ignored or even said not to apply on the inside. In some two hundred and fifty pages, Lieberson cited Durkheim

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[79]Lieberson, *Making it Count*, p. 194.

[80]A.S. Cancio, T.D. Evans, and D.J. Maume, Jr., "Reconsidering the Declining Significance of Race: Racial Differences in Early Career Wages," *American Sociological Review* 61, no. 4 (1996): 541–56.

[81]Technically, the "race coefficient" was generated from differences in slopes in the regressions on race and sex.

[82]G. Farkas and K. Vicknair, "Appropriate Tests of Racial Wage Discrimination Require Controls for Cognitive Skill: Comment on Cancio, Evans, and Maume," *American Sociological Review* 61, no. 4 (1996): 557–60.

[83]Farkas and Vicknair, "Comment on Cancio, Evans, and Maume," p. 557.

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only one time, which, not coincidentally, came at a point where he needed to assure the reality of "Social Facts."[84] Having imputed "*organic entity*" to "*societal processes*," Lieberson was able to avoid explicit discussion by a simple nod in Durkheim's direction. Sociology's insular nature was captured nicely by one of the anonymous referees of a leading theoretical journal, who wrote that "In sociology, we are concerned with the understanding of what Durkheim called 'social facts'. These social facts . . . have individual and collective effects."[85] This same individual went on to suggest that "debates within economics" have little applicability to "sociological theory."

Since Durkheim, broadside attacks on economics have been rekindled in each new sociological generation. It is perhaps significant that even the better of these attacks[86] have been insensitive to what Lachmann called the three great subjectivist thrusts in social scientific perspectives.[87] In its most public expressions which extend from professional journals down through the textual body of the discipline, subjective theory is ignored in sociology by practitioners who consistently neglect their obligations to explicate the objectivist tenets so deeply ingrained their own formulations.[88] No one in the mainstream bothers to defend the labor theory of value, let alone Say's Law or the *higher interests* that impel behavior.

At the conclusion of his most fully matured exegesis, Durkheim described the collective conscience as "the consciousness of the conciousnesses," standing, as he said, "outside of and above individual and local contingencies" as a vessel embracing "all known reality."[89] Easy dismissal of such bombast is unbecoming of individuals who continue to rely implicitly on the ideas out of

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[84]Lieberson, *Making it Count*, p. 109.

[85]Anonymous referee, *Sociological Theory*, August, 1997.

[86]See, for example, T. Parsons, "The Motivation of Economic Activities," in *Essays in Sociological Theory, Revised Edition*, T. Parsons, ed. (Glencoe, Ill.: Free Press, [1940] 1954), pp. 50–68; and White, *Identity and Control*, pp. 42 ff.

[87]Ludwig M. Lachmann, *The Market as an Economic Process* (London: Basil Blackwell, 1986), pp. 144–48.

[88]This point is perhaps most eloquently underscored by its exceptions. As an addition to Granovetter's strong critical voice cited earlier, another outstanding exemplar can be found in the direct challenge to the logical probity of "contextual effects," initiated by Robert Hauser, "Contextual Analysis Revisited," *Sociological Methods and Research* 2, no. 3 (1974): 365–75, and settled in his favor by Lutz Erbring and Alice A. Young, "Individuals and Social Structure: Contextual Effects as Endogenous Feedback," *Sociological Methods and Research* 7, no. 4 (1979): 396–430. This excellent exchange of ideas evidently posed no barrier to the usual practices.

[89]Durkheim, *Elementary Forms*, p. 444.

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which it grew. The core idea, as we have tried to demonstrate, is the infinitely reiterated assertion of the *social fact*. Its present involvement in the *isms* of race, ethnicity, sex, etc., is local in time and place—the gossamer encoding of a popular intellectualizing ideology shared, it would appear, by a large proportion of academic sociologists. In other times and places the *isms* have been, and will again be, differently located.

Ludwig von Mises dismissed the ravings of August Comte on the ground that "he was insane in the full sense which pathology attaches to this term." Be that as it may, it is still important to ask, as Mises did in ending his exculpation, "But what about his followers?"[90]

[90]Mises, *Human Action*, pp. 72–73.

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How Philosophical Errors Impede Freedom

Michael Levin*

That philosophic ideas count is no news to Austrian economists, whose economic theories rest on conceptual analyses of action and value. But philosophy can confuse as well as guide. In this article, I will discuss two philosophical mistakes that in recent times have supported dangerous idiocy while undermining the market.

Reification

I begin with the more familiar mistake: that of reifying society. This is the belief that the word "society" names an entity with its own causal powers, and that people are the way they are because "society" makes them so. Like a mother ship sending out smaller versions of itself on specific missions, the treatment of society as a thing over and above its component individuals leads to more specific abstract nouns, such as crime, wealth, poverty, savings, and peer pressure, being treated as names of real factors. Unlike most fallacies, which are committed when people do not pay attention to what they are saying, reification is taken by its devotees not as a blunder at all, but as a major sociological discovery.

Analytically speaking, the worst effect of reification is that it gives rise to pseudo-explanations. Appeal to such entities as society or crime appeases the appetite for understanding without supplying genuine intellectual nourishment. An hour later you are still curious. Slum youths commit so much crime, we are told, because they are affected by "peer pressure." Yet what is peer pressure but other slum youths committing crimes and inviting their friends along? "Peer pressure" is just another name for the phenomenon we asked about in the first place, criminal behavior in the slums, leading us right back to where we started. Examples of this sort of thing can be multiplied without end. Elsewhere I cite some Connecticut residents complaining "that they were bypassed by the wealth that surged through Fairfield County in the 1980s." Then there is this priceless sentence from the *New York Times*: "The Carter family is being stalked here by what

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the clan's 54-year-old matriarch, Regina, calls a monster: crack cocaine. She has watched it swallow her daughter, and now she is fighting it for her grandson's soul."

As these examples show, reification relieves the guilty individuals of responsibility. Don't blame bad, unproductive, reckless behavior on the tiny cog, but on the big social machine of which it is a helpless part. But the flip side of absolution for vice is disrespect for virtue. Tiny little cogs can hardly be autonomous, or have rights to freedom. What individuals think of as their own decisions are forced on them. Thus, the only way to improve society is by tinkering with the big machine en gross, sweeping individuals along in the process. Such systematic intervention, of a sort only government can undertake, seems to conflict with individual liberty, but hey, individuals are not really free anyway. They are slaves to their social role, so in forcing them to act in new ways, giving them new roles, the state does nothing worse than "society" has already done to them.

This mode of thought is at work in attacks on the use of cheap overseas labor by American firms. Juanita in the Philippines makes running shoes for 50¢/hr, a good deal all around; the finished product is less expensive than if manufactured domestically, and Juanita is better off than she would be without her job. Of course, 50¢ is less than an American would get, mainly because so many other members of Juanita's labor pool are willing to accept that wage. But many people find this scandalous, and accuse Nike of "exploitation." Juanita, you see, is forced to work for 50¢ by the "poverty" of the "third world" she is mired in. The solution, of course, is to attack "poverty" itself by making Nike pay higher wages or confer more benefits than it would agree to under pure bargaining.

Interventionists scorn the free market view that, in Hobbes's words, "The value of all things contracted for [like Juanita's labor] is measured by the appetite of the contractors; and therefore the just value is that which they be contented to give." The interventionist response is that Juanita does not contract voluntarily, for she is caught in a system, etc. Here is where the reification comes in. Having treated the Philippine labor pool as a thing external to Juanita, Carlos, and Corazon which makes them accept relatively low wages, interventionists don't bother to ask why the Philippine labor pool is that way. It is that way because, for reasons having to do with education, ability, and training, the labor of individual Filipinos is on average worth no more. Perhaps Filipinos do not know how to bargain collectively,

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but that too is a reflection of the ability of individual Filipinos to cooperate with each other. "The economy" doesn't make anyone do anything; it is just a name for individuals exchanging goods and services. The character of an economy is explained by the interactions of its constituents. Once this is clear, intervention in "the economy" is seen for what it is, namely coercion of individuals.

Belief in collectives rests on a confusion between two kinds of traits of individuals. First, there are the traits people have when they are taken in isolation, such as height, weight, age and health. Obviously, these individualistic properties cannot explain how people behave in social groups. Watch Robinson Crusoe on his desert island as long as you please, and you will never learn what sort of conversationalist he is. If social "holism" is the claim that the properties of groups cannot be reduced to the individualistic properties of their members, it is true. However, people also have "relational" traits; Crusoe's tendency to tell jokes to anyone who will listen, for instance, is one such. Now, even though that trait involves reference to other people, it still pertains to Crusoe the individual. Thousands of miles from another soul, Crusoe is still a good conversationalist, in the sense that he would tell jokes if he had an audience. The big point is that the properties of a group can be reduced to the relational properties of its members. Once you know how these members react to each other—how garrulous they are, how cooperative, how keenly they negotiate[1]—you can predict the economy they will create, and holism is false. Just keep these two kinds of trait distinct, and you will never reify.

THE SKIM MILK FALLACY

As I say, most Austrians already know of the aid and comfort reification lends collectivism. I now turn to what I regard as a much more consequential error. It is also little discussed, so its destructive effects have largely escaped notice. I refer to the notion that things are never what they seem, or, to put it more abstractly, that science always explains away appearances in terms of their opposite.

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[1]In his friendly critique, "On Austrian Methodology," in Robert Nozick, *Socratic Puzzles* (Cambridge, Mass.: Harvard University Press, 1997), Nozick suggests that methodological individualism is empirically confirmed if individualistic properties can predict strategic interaction in a prisoner's-dilemma-type problem, but disconfirmed in favor of holism if they cannot. This is an interesting stipulation, but, e.g., the tendency to choose a dominant strategy remains a trait of individuals.

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Let me get specific by reviewing four familiar but for all that genuinely epochal discoveries, which, misinterpreted by philosophers and historians, have distorted popular understanding of scientific inquiry.

1) In 1573, Copernicus demonstrated that the Earth revolves around the sun; the Sun and the stars are, in fact, fixed relative to the Earth.

2) A century later, Robert Boyle revived the corpuscular theory of matter, which takes the physical world to consist of numerous minute particles whose interactions explain the properties of macroscopic objects. Two corollaries, learned by most of us by high school, were drawn from this view. First, ordinary objects like a lectern are not solid, but rather are mainly empty space. Second, color is not a feature of anything in nature. Rather, it is an effect of those little particles on the human nervous system that it resides in the mind. The corpuscular theory did not gain firm empirical support until the 19th century, but it quickly persuaded Newton, Locke and other luminaries. It has been part of our intellectual heritage for hundreds of years.

3) Jumping to modern times, puzzles about radiant energy and electron orbits led physicists to propose that the energy possessed by bodies does not vary continuously, but comes in discrete amounts. Fully worked out, this "quantum theory" implied that the more definite a body's momentum, the fuzzier its position. Thus, at any time your hand is spread by waves of probability over the entire universe; it only seems to occupy a sharply bounded region because that is where the probability waves peak. Incredible as this sounds, it had better be true, since it is the theory on which transistors are based.

4) Einstein's Special Theory of Relativity, published in 1905, denies that there are such things as space or time as ordinarily conceived. You may think the Mars Pathfinder (the taxpayer's latest gift to scientists) is doing something right now, at the very moment I am writing this. Not so: two events that are simultaneous for you are not simultaneous for observers moving relative to you. What is more, the distance from the room where you are reading this to Pathfinder also varies with the velocity of the observer. Absolute simultaneity and distance do not exist. As if that weren't weird enough, Einstein later announced that objects falling in a massive body's gravitational field do not actually pick up speed; rather, mass warps space, and what we perceive as gravitational acceleration is uniform motion in curved space-time.

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These cases are so fascinating because in each one what we believe based on ordinary observation is completely overturned. The Sun seems to move across the sky, but it really doesn't. Lecterns seem to be solid and brown, but they really aren't. Hands seem to occupy definite positions, but they really don't. There seems to be absolute simultaneity, but really there isn't.

To be sure, some of these inferences are open to challenge. To call something "solid," it may be argued, means that I can't put my hand through it, and I can't put my hand through this lectern, whether or not it is mostly empty space. It can also be argued that "color" refers to whatever it is about an object, including the arrangement of atoms at its surface, which causes certain sensations in observers. Since the arrangement of atoms at this lectern's surface does cause the requisite sensations, the lectern itself is literally brown.

Still, the message is clear: in four striking cases, scientific investigation showed the world to be the reverse of how it appears. And what has happened, I believe, is that historians of science who should know better have radically over-generalized these cases into (in the jargon of the prime offender[2]) a paradigm. According to this paradigm, science always shows that things are the reverse of how they seem. Deep scrutiny of virtually any phenomenon will reveal that everyday convictions about it are wrong. In fact, taking things at face value betrays naiveté, while readiness to debunk is the mark of the sophisticate, what David Riesman called an "inside dopester." At one point in Gilbert and Sullivan's *H.M.S. Pinafore*, Little Buttercup sings "Things are seldom what they seem, Skim milk masquerades as cream," so I'll call this jaundiced view the "skim milk" fallacy. Skim-milking, I believe, looms large among the factors that have opened the floodgates to oceans of nonsense.

The skim milk presumption that things are seldom what they seem was not given currency by any one writer or coterie, although Kuhn's work on the irrationality of science no doubt helped. So did Freud's doctrine that the reasons from which people think they act usually rationalize far less savory motives of which they are unaware. No, it took hold mostly because of the inordinate attention given four celebrated discoveries of things not being what they seem.

Now, I have no quarrel with the discoveries themselves. But they cannot be taken as typical of science, since they all concern

[2]Thomas Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago: University of Chicago Press, 1970).

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phenomena on non-human scales. It is no wonder that common sense does not register quantum or relativistic effects; they happen too fast, on too great or small a stage, or at velocities not reached in normal experience. Evolution had no reason to prepare us for what happens in nanoseconds, at astronomical distances, or near the speed of light.

However, evolution did shape our faculties to work reliably at the dimensions at which economic and social phenomena take place. A creature poor at recognizing food or anticipating what his fellow-beings will do is apt to leave fewer descendants than more insightful competitors, so we, along with our minds, descended from these competitors. About matters at the scale of human behavior, how things strike us is an excellent guide to how they really are. That is why skim-milking is a fallacy.

Now to connect this fallacy to liberalism.

One of the most vexing aspects of liberal conventional wisdom is its extreme perverseness. Why do so many intellectuals believe such insane nonsense as the following:

- Punishment does not deter.
- Marriage is a form of prostitution.
- Males are innately like females.
- Homosexuals are just like heterosexuals.
- There are no race differences.
- Capitalism impoverishes.
- Individuals freely contracting to exchange goods are being coerced, but buying the only make of shoe from the Soviet State Department Store is freedom.
- Intelligence is irrelevant to life outcomes.
- Any student can perform at gifted levels if his teacher believes he can.
- Giving money to women who have illegitimate children does not encourage illegitimacy.
- Taxing something leads to more of it.
- Taxation is a good way to erase public deficits.
- Look-say is better than phonics.
- Diversity is strength.
- Josef Stalin meant the United States no harm.

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Why, we constantly ask at conferences and in private conversations, would anyone believe such demented idiocy? Liberals are anti-experts: they can be depended on to be wrong. What they say is a trusty guide to what isn't true. Again, why?

Of course there are many specific causes—envy, guilt, identification with the underdog, the prospect of running the state's coercive machinery—but something must prepare the mind to accept what contradicts experience and common sense. This is where skim milking enters. I suggest that these things are believed *because* they contradict observation and common sense. The theme uniting the tenets of conventional liberal wisdom is that they all run exactly counter to experience; I think they are arrived at *from* experience, via the assumption that experience always misleads.

Imagine that you fancy yourself a deep thinker. You want to distinguish yourself from the hoi polloi by knowing things they don't. Being scientific is also desirable, and you've picked up the impression that the aim of science is to overthrow popular prejudices. (Remember, liberals tend to be more educated, so they have heard about these discoveries.) You may well then reason about human behavior like this:

- The sexes seem to differ, so they must be the same.
- Men and women seem to bond from profound emotions, so their association is commercial.
- Blacks do less well than whites and Asians in school, perform less well on standardized tests, earn less, and are more prone to crime, illegitimacy, and welfare dependency, so they must be as intelligent and achievement-oriented as whites and Asians.
- The thought of sex with another man repels heterosexual males, so the homosexual personality must be just like the heterosexual.
- English is a phonetic language, so it should be taught as if it were ideographic.
- Capitalism has led to prosperity wherever it has been tried, so it must be bad.
- Socialism never works, so it must be good.
- Nobody forces market interactants to do anything, so they aren't free.
- Under socialism you are not allowed to do what you want, so you are free.

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• Everyone fears death, pain and loss of property, so threats of death, pain, or confiscation do not affect behavior.

• Smart individuals do well from the earliest grades in school, master difficult material that leaves the rest of us behind, and are counted on as the problem-solvers in the workplace; therefore, intelligence has nothing to do with success.

• Some people can't grasp simple ideas no matter how patiently we explain them; therefore, their failure is a response to our expectations.

• People become demoralized when what is theirs is taken from them, so raising taxes makes them work harder.

• Spending more than you earn is always disastrous, so governments can get away with it.

• People feel most comfortable with others like themselves, so they will love ethnic diversity.

• Stalin accepted a messianic creed whose Armageddon is a confrontation with capitalism; he possessed atomic weapons; he killed millions of his own countrymen in pursuit of his aims; so his meant us no harm.

Only a fully committed skim-milking liberal could dream up reasoning like this, but it all too easily gulls the average person, rightly impressed by science while wrongly convinced that science and common sense are at odds. Once again, there are many reasons that Joe Six-Pack acquiesces in liberal absurdities, but one, I suggest, is the skim milk fallacy. The paradoxes of liberalism are widely accepted by the public because it, too, is under the vague impression that science shows us what really is going on, as opposed to what seems to be going on.

Let's scrutinize the invidious relation of skim-milking to economic liberty. All forms of socialism come down to the belief, in Orwell's phrase, that freedom is slavery. Beneath the skin of bourgeois rights to non-interference lurks the skull of bondage. Recall that Marx impressed generations of intellectuals by calling his socialism "scientific." Earlier brands had been touted as morally superior to the market, but moral superiority is hard to prove empirically; here was socialism deduced from "laws" of history (that also has a nice ring). What conception of science encouraged the revolutionary Marx? Then, as now, the paradigm of a scientific breakthrough was the Copernican, where appearance was denied. Consequently, a "scientific" economic theory should also be one which denies appearances. Well, the one

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thing obvious about trade, employment and other commercial transactions is that they are voluntary. Thus, a "scientific" theory should assert that they are not voluntary—that, for instance, employment is "wage slavery." The worker is forced to accept a pittance for wages because there are other workers bidding for his job in the "economic system." (Notice how skim-milking works hand-in-hand with reifying.) On the other hand, progressive taxation, on its face coercive, enhances freedom by reining in plutocrats. So too does a minimum wage law, despite its seeming to lop off a range of bargains. A novel invention or service so desirable that everyone wants to exchange goods for it is a monopoly which forces itself on helpless consumers. Prices set by the government, which to the uninitiated seem most coercive, liberate consumers from these monopolistic schemes.

The pattern of the old Marxist left, to construe what looks free as enslavement and what looks coercive as liberating, continues with Marx's New Left children. You might think you can see by looking, as Yogi Berra would say, that men and women pair up because they want to, that in all societies women care for the children because they want to do so more than men do, and that men achieve more high-status positions than women because they choose to pour more of their energy into doing so. Ah, but you would be wrong. Men and women act this way because they are brainwashed by "patriarchy." Only affirmative-action role models created by judicial fiat, jawboning of colleges to eliminate men's wrestling in favor of women's field hockey, and total war on stereotypes will free men and women to be themselves. And we would never have known any of this had we relied on appearances. Isn't social science wonderful?

Ironically, Marx and his followers have overlooked another scientific revolution which also overthrew a few appearances but which, properly understood, deepens appreciation of the market. The theory of evolution showed the appearance of design in nature to be misleading. That most features of living organisms display the goal-directedness and efficiency of artifacts led mankind for many ages to think the natural world was created by a planner. As Darwin explained, however, design can be mimicked by randomly generated variations competing to reproduce under environmental constraints. The world may be an artifact in some ultimate theological sense, but so far as natural processes go, it merely simulates one.

Unplanned goal-directedness calls to mind the spontaneous, uncoordinated order that emerges as goods compete to survive in

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the market. Animals must absorb energy and attract mates; goods must absorb factors of production and attract buyers. Complex ecosystems evolve, as only those organisms survive which can find sufficient food, and only those goods and services survive which can be transported to a sales-point. Both the wild and the market witness progressive refinement, as variations of surviving designs are generated and themselves culled, leaving the hardiest variants of variants. Early models (eohippus, the Reo) give way to later ones (Percherons, the Corvette), and crude methods of reproduction (mitosis, piecework) to more elegant (sex, the production line). Liberals fret about the unplannedness of the market. They call a health care non-system of private doctors, private insurers and private hospitals a "hodgepodge." Here appearances really do deceive. Undesigned order is perfectly possible.

In recent years mathematicians have been developing general theories of replication, research illuminating not only the processes I've just mentioned, but also the more mysterious properties of socioeconomic systems, such as the emergence of morality. The market depends on good faith. But why do people keep their word when deception would be profitable? Why do we tend to punish greed when colluding with it would be advantageous? For reasons, it turns out, not far from those for which animals will not pursue combat to the death, and the ratio of males to females in a population remains about 50-50. At the same time, as you can see, this research also helps reduce large-scale system features to the behavior of competing individuals, driving another nail into the coffin of reification. In this, it is pursuing the true and permanent aim of science, the explanation (not the poohpoohing) of what we observe.

So I end here with the beginning of a new topic. On the whole, Austrian economists probably suspect sociobiology—what I have been talking about—of being another form of reductionism, and will want to know the autonomous choice characteristic of humans can be prefigured in animal behavior. All things considered, Adam Smith probably read Darwin.

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WHITE MALE PRIVILEGE? A SOCIAL CONSTRUCT FOR POLITICAL OPPRESSION

Hugh Murray*

Each day in America, white males face government-sponsored discrimination. If in high school, the white male may be denied a chance to apply for special programs because he is not a preferred minority, or in some cases, a female. There are scholarships available, but many cannot be awarded to white males. In applying for university, admissions will admit "basically qualified" minorities, but reject better qualified whites. When applying for a job, the same type of discrimination occurs. If the teen finally succeeds in finding employment, special on-the-job training may be denied him in order to guarantee slots for minorities, even if they be lesser qualified, even if they have been on the job for a shorter time. At the firm, he may be subjected to the racial and sexual harassment rituals called "diversity training," whereby he is supposed to confess guilt to crimes committed before his birth. Yet, at the same time, he must deny his own experience; he must utter not a word about the discrimination he has encountered because he is a white male. His is the discrimination that dare not speak its name; were he to mention it, he would immediately be labeled "racist," disruptive, and a possible threat to the firm's good graces with the federal government's Equal Employment Opportunity Commission and its commissars in his employer's personnel office. If he tires of such oppression, or if he is fired, or wins a lottery, or somehow scrapes together enough money to begin his own firm, he will be denied even the opportunity to bid on many government contracts simply because he is a white male—those contracts are set-aside for minority or female companies.

And how is this discrimination justified by our courts, our media, our academia? First, it is ignored. When occasionally the issue surfaces, it is dismissed as an aberration. But on another level, liberals proclaim that in the name of "equal opportunity," equal opportunity must be denied white males. Before her appointment as Chair of the Civil Rights Commission during President Clinton's first term, Mary Francis Berry, a black woman, had announced that civil rights do not apply to whites. The way liberals interpret and enforce the law, equal opportu-

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nity and civil rights are granted to some but denied to others. Moreover, discrimination against white men is to be encouraged because it is the discrimination to end discrimination; government takes race into account so in future we will not have to take race into account. Such is the sophistry of liberal Supreme Court Justices and Civil Rights bureaucrats! To our governmental, corporate, and academedic elite, the white man deserves to be discriminated against because he is privileged. How did this system come to prevail throughout America?

It is clear that the answer cannot readily be found in the media, with its liberal bias on race. Just ponder how what I described above has been purposely avoided on the nightly TV news. Sociological journals have so neglected white male victims of affirmative action that Frederick R. Lynch titled his book on the subject *Invisible Victims: White Males and the Crisis of Affirmative Action*.[1] Historians have distorted the history of the civil rights movement so as to pretend that this racial discrimination IS civil rights.

In monster movies of the 1950s, scientists combed the countryside with Geiger counters measuring radioactivity; today "civil rights" proponents investigate every institution in America with their "proportional" counters. If blacks, or women, or Asians, or "Native Americans," or Hispanics do not have their proportional share of jobs, promotions, managers, scholarships, etc., there is an immediate outcry in the media of "racism"; the EEOC, Justice Department, and other agencies swoop in to punish culprits and set quotas under the euphemism "establishing goals and timetables."

To understand the incredible injustice of affirmative action, and the cover up of this injustice by the liberal elite, we must look more closely at this policy and the arguments presented to justify it.

How do liberals justify such discrimination? Their theory is based on a number of assumptions. First, all peoples are equally talented in all fields. Liberals modify the Jeffersonian "all men are created equal," acknowledging differences in intelligence, athletic ability, character, between and among individuals. However, they assume that all large groups of people are equally talented in all fields. Women are just as intelligent, and given a chance to prove themselves, just as strong as men (though to

[1]Frederick R. Lynch, *Invisible Victims: White Males and the Crisis of Affirmative Action* (New York: Greenwood Press, 1989)

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maintain this some liberals will redefine strength to emphasize endurance or areas where women may outperform men.) Blacks have already proven themselves on the athletic fields, but given a fair chance, they can be seen as just as intelligent as whites (again, some liberals redefine intelligence to include emotional intelligence or artistic ability to emphasize areas wherein blacks may outperform whites). And so the assumption is made for all large groups—Hispanics, Asians, Amerindians, etc. If all groups are equally talented, then why are white men so dominant in business as CEOs, in government, and in academia? The reason is prejudice, past and present. Because blacks were enslaved, and then denied equal educational and other opportunities during the era of segregation, they could not rise to their proper place in government, medicine, business. Women, too, were oppressed, even being denied the right to vote for President until 1920, and denied equal rights in other areas until quite recently. And so with other groups. They lag behind in America today because of their history of oppression—racism, sexism, ethnocentrism. The beneficiaries of this oppression were and are white men. Today, the imperative of justice is to break the historic chain of injustice by ending the historic advantage inherited by white men.

Since all peoples are equal, it follows that in a just society, all peoples, equally talented in all fields, will each have their proportional share of lawyers, doctors, fire chiefs, criminals. But as this is clearly not the case in America today, the aim of justice is to strive for such in society. Thus, it is necessary, and *fair*, to give preferences to groups that have been excluded or underrepresented in various fields. So if a white teen has a higher score than a black teen from the same high school on an SAT for a scholarship, it is not really discrimination to deny the white that award and give it to the black. It only *seems* like discrimination; in reality, it is fair and just.

After all, why is the black teenager not performing as well as the white on the test? His father may be in jail; his mother on drugs; he may not have been encouraged enough toward academic pursuits. His cultural milieu is the heritage of slavery and segregation. The SAT test, far from measuring the intelligence or academic abilities of the two teens, merely measures the privileges inherited by the white. And so the SAT, the LSAT, the medical exams, nursing exams, teachers exams, and all other objective exams are objective only in highlighting the degree of prejudice experienced by blacks, women, and other minorities. Such "objective" exams are thus objectively racist and sexist.

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Similarly, police and firefighters exams, even if minorities help construct the tests. Even drug exams are racist because it is natural that more oppressed minorities might be more prone to use illegal substances. Clearly then, seemingly color-blind objective exams are racist; sex-blind objective exams are sexist. The only test, the only exam that should be used is proportionality. Only when the same proportion of women and blacks and Hispanics do as well as whites on an exam is that examination truly free of immediate bias and the effects of past bias. The proportionality exam thus provides the test for discovering bias, the measure of discovering the degree of bias, and the method of overcoming such bias. The proportionality test is the test that tests all other tests. Thus, the white teen and his successor should be denied the scholarship until the black teen, and his successor, have a proportional number attending college, teaching in college, and as CEOs.[2]

This is the theory that underlies affirmative action (hereafter AA). For example, Barbara Bergmann, an economist, in her widely-publicized, *In Defense of Affirmative Action*, presents her case. To her, AA is a matter of conscience, "planning and acting to end the absence of certain kinds of people . . . from certain jobs and schools." The purposes of AA are to end discrimination, promote integration, and reduce poverty of minority groups. "The heart of an AA plan is its numerical hiring goals, based on an assessment of the availability of qualified minority people and women for each kind of job." Bergmann acknowledges that AA programs "do have quota-like aspects," but she contends that this is the only method to get qualified women and minorities into jobs, for without AA they would be rejected. One of her points is that not only is AA necessary to redress the wrongs of slavery and segregation in the past, but that in today's job market there is considerable racist and sexist discrimination proved by her charts showing continued racial and sexual segregation in employment. Furthermore, the wage gap continues to exist between white men and black men, white men and women.[3]

Because "a majority of Americans desire to live in a country that is fair,"[4] the only method to overcome such discrimination is by continuing and intensifying affirmative action. Bergmann does consider alternatives to AA, such as a program based on economic

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[2]See my "The Case Against Affirmative Action," *Telos* (Fall 1992): 145–58.

[3]Barbara Bergmann, *In Defense of Affirmative Action* (New York: Basic Books, 1996), pp. 7, 9, 12, 13, 43, 37.

[4]Bergmann, *In Defense*, p. 61.

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need rather than race, but as most of the poor are whites, they might overwhelm such programs unless there were quotas and set-asides established for poor blacks. So Bergmann concludes, the present system is the best.

Bergmann opens her book by commending President Clinton for his desire to choose a Cabinet "that looks like America," shortly after his first election. But, which group was most overrepresented in the Cabinet by the end of Clinton's first term? Is it the privileged white males, villains of Bergmann's book and liberal ideology? Of the 14 members of his Cabinet in the summer and fall of 1996, eight were white men. As whites are about 76% of the national population, those eight white men and two white women compose approximately the "fair share" Bergmann would allot to whites. But white men are 57% of the Cabinet, far more than their 38% of the population. Again, just looking at the Cabinet, one can encounter white male privilege! Bergmann seems correct. But look closer. Four of those white males are Jewish. So white male gentiles, who compose about 37% of the population, form only 28% of the Cabinet—*they are underrepresented.* Yet, Jewish males, some 1% of the population, compose another 28% of the cabinet. And, because Jews are so vastly overrepresented, the underrepresented white male gentiles are branded by liberal Jews as the "privileged" group!

Bergmann and the other liberals distort the picture of America through their misuse of statistics. Thus, gentile white males are called "overrepresented" and deemed worthy of being discriminated against, when they may indeed be underrepresented and, by the liberals' own standards, "deserving of affirmative action." But white male gentiles are denied any aid because liberals consciously ignore them in their statistics by including with them the overwhelming overrepresentation of Jews! Liberals seek to camouflage the overrepresentation of Jews by pointing the finger at alleged "white male privilege." But what is true in Clinton's Cabinet is true in medical schools and law schools and other elite areas. No wonder, Bergmann can declare, "we no longer have a 'Jewish seat' on the Supreme Court because it is no longer needed."[5] Of course not! The reason: of the nine justices, two are now Jews. So representatives of 2% of the population compose 22% of the highest court of the land. Bergmann does not complain about this "unfair" proportion. Similarly, when Mrs. Bergmann complains about so few women and minor-

[5]Bergmann, *In Defense*, p. 97.

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ities in the United States Senate as an illustration of discrimination,[6] she neglects to mention Wisconsin, where both Senators are Jewish men. Thus, less than 1% of the state's population provides 100% of its Senators. True, Bergmann might complain, but only because it is an all-male delegation. Then, consider California's Senators—two female Jews. No complaint from Mrs. Bergmann. She is from the most privileged, the most over-represented group in America. Yet, she diverts attention by decrying the overrepresentation of white males, even declaring white male waiters in restaurants privileged, though they serve her!

Mrs. Bergmann's statistics are aimed at obfuscating and distorting. She seeks to portray all white men as privileged because some are overrepresented in profitable enterprises. And because of this "privilege," preferences must be granted to all those who are not white men. But the group most overrepresented is NOT white men, it is Jews. Even economically, the gap between whites and blacks is NOT as great as that between Jews and gentiles.[7] So, if Bergmann is accurate that the purpose of AA is to narrow the economic gap between blacks and whites, how much greater the necessity for AA on behalf of gentiles to narrow the ever-wider economic gap between Jews and gentiles? If Bergmann were to reply that this is beyond the scope of the Civil Rights Act, she is wrong. The Civil Rights Act of 1964 prohibited discrimination based on religion as well as any based on race, sex, or ethnic origin. Bergmann, the EEOC, and the civil rights lobby all stress that the individual is less important than the statistical aggregate in exposing "discrimination"; that statistics are the method of revealing what is wrong in the work place, and, with, AA (quotas) goals, and timetables, providing the best means of overcoming the discrimination proved by the numbers. Then, by her own system of determining discrimination, it is clear that Jews are the most overrepresented group in the most lucrative positions in the nation. Furthermore, the average income of Jews is sufficiently higher than gentiles to exhibit a massive economic gap. Why does not Mrs. Bergmann include this among her statistics? After all, she is an economist.

Bluntly, the proportional test, the liberals' test of all tests, when applied to the religious clause of the Civil Rights Act of 1964, shows Jews to be the most privileged and oppressive people in America. The favorite test of liberals reveals white men to be

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[6]Bergmann, *In Defense*, p. 16

[7]Christopher Jencks, *Rethinking Social Policy: Race, Poverty, and the Underclass* (Cambridge, Mass.: Harvard University Press, 1992), p. 28.

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less privileged than Jews. Why does not the *New York Times*, the EEOC, the television networks, report that statistic? The media is silent on Jewish privilege. But if the media began to expose "Jewish privilege" and demanded preferences for gentiles until they had received their "fair share" of important posts, there would be immediate denunciations of the media's bigotry. However, the media and government are even more bigoted when they denounce white male privilege and demand preferences for women and minorities. Yet, few denounce this bigotry.

Either the liberals' proportionality test is valid, in which case Jews are the most privileged and oppressive people in America, or the proportionality test is flawed, providing bizarre results, and should not be used to allege white male privilege. Nor should that test be used to undermine the SAT, the LSAT, the medical tests, the police exams.

Concisely, here is the liberals' dilemma—either white male privilege is a myth and AA, erected upon the myth, should be demolished; or, if white men are privileged, then Jews are even more so. And if, because of white male privilege, AA is essential to aid underrepresented minorities and women (the majority) until they have achieved their "fair share" (quota) of lucrative rewards in society, then because of Jewish privilege, all the more reason to institute AA to aid underrepresented gentiles (again, the majority) until they have achieved their "fair share" of lucrative rewards in society.

Conservatives Roberts and Stratton and remind us that the debate about the Civil Rights Act of 1964 was the debate over quotas; it would never have been enacted without a series of amendments to ensure that quotas would not result. Democrat Emmanuel Celler amended the proposal so that the EEOC could make no substantial interpretations of regulations. Sen. Everett Dirksen amended it so that discrimination must be "intentional" and seniority systems protected. Sen. John Tower amended it to protect continued use of aptitude tests in which whites invariably scored higher than blacks. All the supporters of the bill assured the nation that there would be no quotas—and Roberts and Stratton quote Senators Hubert Humphrey, Clifford Case, Thomas Kuchel, Harrison Williams, and even the Leadership Committee on Civil Rights to that effect.[8]

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[8]Paul Craig Roberts and Lawrence M. Stratton, *The New Color Line: How Quotas and Privilege Destroy Democracy* (Washington, D. C.: Regnery, 1995), pp. 66, 72–73, 81, 82–83.

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Roberts and Stratton do more by exposing the subversion of the Civil Rights Act of 1964 by EEOC activist Alfred Blumrosen, who was determined to redefine discrimination based on statistical differences in outcomes between blacks and whites. Blumrosen aimed to make "intent" irrelevant and abolish use of most aptitude and intelligence tests or any other job requirement that had a disparate impact on blacks. Of course, to achieve these ends, Blumrosen got the EEOC to make substantive interpretations of regulations. He was aware that he was going beyond and against the law. Yet, he hoped that the courts would permit his changes as courts would defer to the expert status of the commission.[9]

By 1966 the EEOC was illegally collecting racial statistics from employers, setting in motion the data collections for the proportional representation and disparate impact theory of discrimination. If blacks (or later women, or Hispanics) were employed below their population in a given area, this might prompt a prima facie case of discrimination by the EEOC. Roberts and Stratton expose Blumrosen's assault upon the Civil rights Act of 1964, which he totally subverted, a view acknowledged in its own history of the commission prepared by the EEOC during the Johnson administration. Blumrosen's subversion was accepted as law by the U. S. Supreme court in 1971 in the *Griggs* decision, which completely misinterpreted the history and clear meaning of the 1964 law in order to accept Orwellian interpretations propounded by Blumrosen. After *Griggs*, in "employment and promotions, unequals had to be treated as equals," and "race-based privileges had found their way into law." Roberts and Stratton assert that *Griggs* killed four birds with one stone: 1) intent was hereafter unnecessary to show discrimination; 2) tests or qualifications in which blacks did poorly were judged discriminatory (for most jobs, employers were suddenly barred from inquiring about a person's grades in school, if he had a diploma, or an arrest record); 3) quotas would be permitted, and 4) the EEOC could issue substantive regulatory interpretations.[10]

In the late 1980s the Supreme Court began to modify some of its disparate impact, pro-preference, and pro-quota rulings. In response, Congress enacted the Civil Rights Act of 1991 which "in effect, repealed the 1964 act by legalizing racial preferences." Legally, "the situation for white men today is . . . worse

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[9]Roberts and Stratton, *The New Color Line*, pp. 90–91.
[10]Roberts and Stratton, *The New Color Line*, pp. 95, 98, 99.

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that it was for blacks under *Plessy*" for then it was separate and equal in theory; today whites are theoretically and legally denied equality before the law.[11]

The quota laws and quota mentality have rippled throughout this nation. "The U. S. Merit Systems Protection Board, which oversees the Civil Service, now measures in terms of a civil servant's support for quotas." For an FBI security clearance today, one will be checked on any ethnic or gender bias. And while the FAA encourages organizations of employees of blacks, Hispanics, Asians, gays and lesbians, any employee who is caught reading material of the Coalition of White Aviation Employees may be fired. The Forest Service, to discourage white male applicants and meet quotas, advertised for positions with the warning, "only unqualified need apply."[12]

Roberts and Stratton fail to raise an important question. The Civil Rights Act of 1964 outlawed racial AND religious discrimination. Why did not Blumrosen, on the same questionnaires in which he queried about race, ask about the religion of those employed? The reason was simple, as Blumrosen undoubtedly knew: it would destroy his theory. Such a questionnaire would show that in some of the most profitable professions, the group most overrepresented (and by Blumrosen's theory, most oppressive and deserving to be restricted by quotas) was not the "privileged white male," but Jews. But, as Roberts and Stratton note, "personnel is policy" in the bureaucracy; Blumrosen asked the race question on the forms but insured that the second, related, religious question went unasked. White males became the scapegoats in the EEOC crusade against privilege.

And once smeared as privileged, the non-privileged middle-class, working-class, and poor whites pay for the "moral" system of AA by being legally discriminated against and denied equal opportunity. But then, the history of America since the 1960s is often the record of wealthy liberals using the law to curb and oppress blue-collar whites, because the blue-collar folk are deemed privileged, prejudiced, and provincial. Therefore, such blue-collar whites deserve to be passed over in scholarships, jobs, and promotions; the blue collar crowd should be shunted aside, and instead the "pets" of the elite should be elevated: the children of illegal immigrants, of wealthy minorities, and the daughters of wealthy liberals. And all this is rationalized in the name of morality, fairness, and justice!

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[11]Roberts and Stratton, *The New Color Line*, pp. 112, 113.
[12]Roberts and Stratton, *The New Color Line*, pp. 138, 141.

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An academic supporter of AA, John Skrentny, treats the development of AA differently. Skrentny acknowledges, "Though civil rights and African American groups may have supported affirmative action as a preferred civil rights measure since at least the 1970s, the policy is largely the construction of white male elites who traditionally have dominated government and business. The historical record shows that these elites (who are often assumed by the Left, by definition, to act *against* minority interests) advocated different parts of the affirmative action model before or without the influence of any organized civil rights groups that was lobbying for affirmative action. At one point, the [Nixon] White House actually lobbied the civil rights groups to support affirmative action."[13]

Despite his emphasis on the riots, Skrentny concedes that the major change occurred in March 1966 when the EEOC sent out its reporting forms to the industries to be covered by the Civil Rights law. "Legal scholar and EEOC advisor Alfred Blumrosen instigated the development."[14] Actually, the forms were sent to many industries beyond the jurisdiction of the EEOC, for the law had given priority to state FEPCs in those states that had them. Firms located in such states should have received no EEOC forms. This was another example of Blumrosen's "creativity," or going beyond the law. The idea of reporting employees by race had been debated at a White House conference in August 1965, and was debated again inside the EEOC that December, when only Bernard Frechtman opposed. A few months later, the EEOC sent out its race forms. A similar trend occurred inside the Office of Federal Contract Compliance (OFCC), created in September 1965 by Johnson's Executive Order. The OFCC was inside the Labor Department. Yet, the Executive Order, like the Civil Rights Act, emphasized that race NOT be considered.

Skrentny justifies the collection of race data by asserting that "agencies . . . are expected to gather information relevant to their goals" and "Washington is awash in various statistics, rates, and figures." Quantification is a feature of Western modernity.[15] This seeming explanation is again, camouflage, distortion. The law was to prevent discrimination based upon race, color, and religion, among others. Why did Washington, aflutter in

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[13]John Skrentny, *The Ironies of Affirmative Action: Politics, Culture and Justice in America* (Chicago and London: The University of Chicago Press, 1996), p. 5. On p. 87, he reasserts that powerful elites pushed AA.

[14]Skrentny, *Ironies of Affirmative Action*, p. 127.

[15]Skrentny, *Ironies of Affirmative Action*, p. 143-44.

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statistics, knowing that figures are part of the Western project of modernization, not send out forms requesting the religious background of all employees of large firms? The reason is clear. Blumrosen at EEOC, Leonard Bierman at OFCC, and others would have been horrified. The same proportional standard that they were creating that would expose "discrimination" against blacks in employment, etc., would have shown greater "discrimination" against gentiles. Either their own group would be placed in a vulnerable position, or there was something clearly wrong with the standard that they were seeking to impose on America. Are we to believe that they were unaware that the standard they were preparing to inflict on the nation was flawed? Then why did they not demand the religious questions on the form? Pragmatic action or conspiracy?

The liberal's American dilemma is this: either the EEOC is guilty of selective enforcement of the Civil Rights Act by not applying the religious features of the act as it does the racial, sexual, and ethnic features (i.e., by not requiring religious identification to insure religious "goals and timetables" for underrepresented groups), or the EEOC is guilty of selective malenforcement (subversion) of the Civil Rights Act (that was passed to provide equal opportunity to all and to deny privileges to any based on race, religion, national origin, or sex).[16]

Skrentny justifies the massive change that was occurring in the definitions of discrimination, race-consciousness, race-preferences, etc., by calling AA a "new kind of racial justice." As courts gave the AA model the force of law through disparate impact decisions, businesses found that they had to hire by "voluntary" quotas or face heavy fines for discrimination.[17]

When the Nixon Administration revived the Philadelphia Plan, to make it legal, it decided to require definite quotas, instead of the vague ones that had been declared illegal the previous year. However, to dodge the 1964 Civil Rights Act's provision that had explicitly forbade quotas, the Nixon Administration would call the quotas, "goals" and "targets." This attempt was opposed by Republican Sen. Everett Dirksen. Dirksen reminded the public that it was in his office that Title VII of the Civil Rights Act had been written. Dirksen knew a quota by any other name was still a quota, and illegal by the provision of the

[16]Where are the civil liberties attorneys willing to challenge Affirmative Action as "selective enforcement" of the law?

[17]Skrentny, *Ironies of Affirmative Action*, pp. 145, 159.

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1964 law. But Dirksen also had cancer, and he died before he could prevent Nixon's subversion of the Civil Rights Act. Nixon implemented and extended quotas.[18]

Nevertheless, Skrentny concludes that the Philadelphia Plan was "the most radical civil rights employment measure in American history. Skrentny observes that the white male elite pushed AA. Riots made it easier to accept, as jobs for blacks had a high priority. The Kerner Commission had blamed the riots on white racism and had heard some testimony urging racial quotas.[19]

Skrentny proclaims that business did not oppose AA, but the unions did.[20] This is both true and false. Look for example at the case of Brian Weber. Weber, a white male, was denied entrance to a training program based on seniority rights in order to make way for minorities with less seniority. Though there had been no previous discrimination against blacks in the plant, both the corporation *and* the union had agreed on double standards to promote black workers, at the expense of low-ranking white workers. Weber had to sue both Kaiser Aluminum and the United Steelworkers of America to seek equal opportunity. In 1979 the US Supreme Court rejected his demand, and legalized union discrimination against their white members.

Skrentny also asserts that all interests are social constructs.[21] I ask, like "white male privilege"? And in whose interest was it to construct a category, white, male, and then denounce it as privileged and deserving to be discriminated against?

Skrentny discusses a Supreme Court Justice who, aware that the Constitution is color-blind, hoped to forestall accepting a case that would render a decision against AA. By delaying, he believed some social change would occur.[22] But would that change be for the better? Justice delayed IS justice denied to poor whites who cannot get scholarships or admissions to universities, to their parents who are denied promotions and jobs because of their color. To the elite who composed and imposed this policy, it is no problem. But to the poor and blue collar whites, it is hell.

Conservative Terry Eastland exposes some of the mendacities of the supporters of AA, providing instances of when they have

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[18]Skrentny, *Ironies of Affirmative Action*, pp. 193, 195–96.
[19]Skrentny, *Ironies of Affirmative Action*, pp. 198, 223.
[20]Skrentny, *Ironies of Affirmative Action*, p. 232.
[21]Skrentny, *Ironies of Affirmative Action*, p. 232.
[22]Skrentny, *Ironies of Affirmative Action*, p. 240.

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indeed demanded specific quotas in hiring, and the hiring of *un*qualified minorities. He explains how many of the private "voluntary" AA programs are implemented only because, without such programs, the firms might suffer heavy fines. Thus, "voluntary," like "equal opportunity," "not quotas, but goals and timetables," "ending discrimination," "hiring only qualified minorities and women," and other phrases take on Orwellian meanings when uttered by proponents of AA.[23]

Eastland stresses the unanticipated role of the change in immigration laws on AA policy. Programs once justified to help American blacks overcome the injustices endured during slavery and segregation, now provide fewer preferences to American blacks than to recent third world immigrants and their children. Indeed, three-quarters of new immigrants qualify for AA preferences that give them an advantage over American born white men. Eastland relates how various ethnic groups have lobbied to be included on the Small Business Administration's list of pet groups that receive preferences, how blacks have fought to rescind preferences for Asians in Ohio, while Latinos in California have complained that blacks have too high a proportion of government jobs there.[24]

CONCLUSION

I contend that AA developed, in part, as a consequence of a conspiracy inside the EEOC, which can be seen by the agency's sending out forms so that all major firms in the nation would have to report on hiring by race. 1) This was beyond the legal jurisdiction of the EEOC; and 2) the EEOC did not ask those firms to report on the religion of their employees—though the purpose of the Civil Rights Act was to end discrimination based of race *and* religion.

The strongly pro-AA Bergmann and Skrentny, and the strongly anti-AA Eastland all recognize that big business supported AA. Skrentny extends that to declare that America's elite developed AA and made it policy. Bob Zelnick quotes black academic Glen Loury that affirmative action is "a small tax corporate America pays to the black elite."[25] No matter how it

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[23]Terry Eastland, *Ending Affirmative Action: A Case Study for Colorblind Justice* (New York: Basic Books, 1996), pp. 11, 12.

[24]Eastland, *Ending Affirmative Action*, pp. 150, 17, 146–47, 148, 18.

[25]Bob Zelnick, *Backfire: A Reporter's Look at Affirmative Action* (Washington, D.C.: Regnery, 1996), p. 7.

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hurts millions of middle class and poor whites, it has been supported by corporate America. The National Association of Manufacturers and the Equal Employment Advisory Council supported and saved AA, especially during the Reagan Administration when some elements sought to have the President rescind the entire policy by Executive Order. Perhaps the culmination of this occurred when Congress passed the pro-AA Civil Rights Act of 1991. Many conservatives urged President Bush to veto it as he had vetoed the quota bill of 1990. However, big business lobbied in favor of the bill, and Bush signed the bill into law in 1991.

Why? "While AA may be one of the costs of doing business for the big fellows— . . . it is no threat to their existence and can even be viewed as raising the entry barrier to potential competitors, the little guys."[26] To put it bluntly, IBM and Proctor and Gamble can afford to hire dummies, druggies, and violent criminals. Smaller companies cannot. Meanwhile, the large corporations gain an image of compassion and fairness. Better qualified whites who are not promoted or hired are poor or working class whites. But with AA, those poor whites are labeled "privileged," and therefore deserving of being denied employment or promotion. Meanwhile, the wealthy, privileged, CEO's receive humanitarian awards. Clearly what is most needed is a class analysis of the monstrosity called affirmative action.

Worse, Roberts and Stratton fail to answer the moral argument of the Left. For many who read their concluding statement —America has a choice of democracy or quotas—many will choose quotas. To them quotas are just, and justice precedes democracy. But their view is based on the notion that blacks were so oppressed in this country, 85 years in slavery, and decades of segregation, that "it's our turn now," as Justice Thurgood Marshall explained his philosophy. Quotas, set asides, and race preferments are deemed necessary to achieve justice. If democracy will not accommodate these, then democracy be damned. White America owes blacks.

My response is that because blacks were enslaved in the US for a century is no reason to oppress or enslave the descendants of those whites today. First, had the ancestors of American blacks not been taken from Africa, they might have been born in Africa to starvation, as in Somalia, to slaughter, as in Rwanda, or to continued slavery, as in Sudan and Mauritania. In addition, it was not the whites who were evil; it was the institution of slav-

[26]Zelnick, *Backfire*, p. 60.

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ery that was evil. Furthermore, slavery was abolished in a war in which more white Americans died than in all other American wars combined. If whites were guilty of slavery, that debt has been paid by whites in blood. Similarly, if blacks suffered from segregation and discrimination by whites, there is no reason to submit the descendants of those whites to segregation and discrimination. It was not the whites, but the institutions of segregation and discrimination that were evil. And whites, like blacks, sacrificed to end the evils of segregation and discrimination. The civil rights movement had black and white martyrs. But with AA, a new, evil, racial discrimination is imposed by government, this time against white men, and especially against poor white men. AA is therefore unjust and immoral should be abolished.

If Roberts and Stratton maintain that the choice is between quotas and democracy, Zelnick quotes some who seem to agree. When a black official in the Bush administration questioned the legality of blacks-only scholarships, Spike Lee responded that the black official was an Uncle Tom who should be beaten in an alley with a Louisville slugger.[27] When professors in California proposed an end to affirmative action and organized the California Civil Rights Initiative, California House Speaker Willie Brown spoke at the university where one of the professors taught.

> Believe me, if you treat him correctly, during the time you are in his class, by the end of the session he should really need therapy. . . . You should do your best to terrorize professors you don't like, and I guarantee he will be a basket case by the end of the year.[28]

Clearly, neither Lee nor Brown believe in free speech or democracy for their opponents. They believe in quotas AND terror. Brown is now Mayor of San Francisco.

Despite the massive belief of Americans that race and gender preferences constitute racial and sexual discrimination, and are therefore immoral, unfair, and unAmerican, our business elite, our governmental elite, and our liberal academedia elite continue to uphold these policies. Why? This is a crucial question.

In summary, the great hoax that is concocted by and unquestioned in the media, academy, and government is "white male

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[27]Zelnick, *Backfire*, p. 147.

[28]Zelnick, *Backfire*, p. 369.

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privilege." Most white men are not privileged. Those who are privileged often support affirmative action because it is no skin off their nose—their children will not require a scholarship, an entry-level job, a position as policeman or fireman, or a promotion. It is the poor and middle-class whites who, denied equal opportunity, must pay with thinning wallets and shrunken dreams for the "morality and conscientious efforts at diversity" imposed by the wealthy, liberal elite.

In reality, affirmative action is class war against poor and middle-class whites. This is why it is *not* surprising that corporate America has supported affirmative action, blocking attempts by the Reagan Administration to end the policy, and encouraging Bush to sign the Civil Rights Act of 1991, which he had earlier called "the quota bill."

Even if every CEO in America were a white male, that would be no reason to discriminate against a poor, white teenage boy seeking a scholarship to college in order to give it to a lesser qualified minority or girl who may be studying beside him in the same school. We must end the discrimination called affirmative action.

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